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Annual Report 1989

ILLINOIS LEGISLATURE

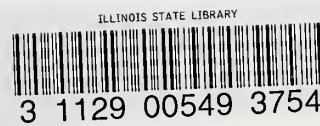
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ILLINOIS LEGISLATURE

**JOINT
COMMITTEE
ON
ADMINISTRATIVE
RULES**



1989
ANNUAL REPORT



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1989 ANNUAL REPORT
OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Submitted to the Members of the
General Assembly of the State of Illinois

Membership

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Representative John W. Countryman, Co-Chairman
Senator Laura K. Donahue, Vice Chairman
Representative Monroe Flinn, Secretary

Representative Larry W. Hicks
Representative Ellis B. Levin
Representative Thomas J. McCracken, Jr.
Representative W. Thomas Ryder
Senator Tom Dunn
Senator Doris Karpel
Senator William L. O'Daniel
Senator Harry "Babe" Woodyard

Bruce A. Johnson, Executive Director

509 South Sixth Street
Room 500
Springfield, Illinois 62701

January 1, 1990

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DORIS C. KARPIEL
WILLIAM L. O'DANIEL
HARRY "BABE" WOODYARD

HONORABLE MEMBERS OF THE 86TH GENERAL ASSEMBLY

Ladies and Gentlemen:


We hereby submit the 1989 Annual Report of the Joint Committee on Administrative Rules. As Co-Chairmen of the Joint Committee, we would like to report the continued progress of the oversight process in Illinois. An overview of the Joint Committee's rules review activities can be found in the following pages.

We gratefully acknowledge your continued support and assistance and we encourage all members of the General Assembly to take an active role in this vital oversight function which guarantees that the public right to know is protected through the promulgation of specific rules which are applied equally to everyone regulated. We welcome your suggestions and comments on agency rules and the development of the role of the Joint Committee. Only as each of us as elected representatives becomes concerned and involved in the oversight process, can the Joint Committee, acting on your behalf, ensure that the intent of the legislation that we pass is upheld.

Respectfully,

Senator Emil Jones, Jr.
Co-Chairman

Representative John W. Countryman
Co-Chairman



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1989 ANNUAL REPORT

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| List of Tables | ii |
| Introduction | 1 |
| Membership | 3 |
| Review of General Rulemaking | 5 |
| Review of Emergency and Peremptory Rulemaking | 19 |
| Economic Impact Review | 27 |
| Complaint Review Program | 29 |
| Public Act Review | 33 |
| 1989 Legislative Activity | 35 |
| Research and Special Reports | 39 |
| Publications of the Joint Committee | 41 |
| Court Decisions | 43 |
| APPENDIX A: History of the Joint Committee on Administrative Rules and the Illinois Administrative Procedure Act | 45 |
| APPENDIX B: Illinois Administrative Procedure Act | 59 |

LIST OF TABLES

| | <u>Page</u> |
|---|-------------|
| TABLE 1 General Rulemaking by Agency | 13 |
| TABLE 2 Objections and Recommendations Issued to General Rulemaking by Agency | 15 |
| TABLE 3 Objections and Recommendations Issued to General Rulemaking by Type | 16 |
| TABLE 4 Objections and Recommendations Issued to Existing Rules by Agency | 17 |
| TABLE 5 Objections and Recommendations Issued to Existing Rules by Type | 17 |
| TABLE 6 Emergency Rulemaking by Agency | 22 |
| TABLE 7 Objections and Recommendations Issued to Emergency Rules by Agency | 23 |
| TABLE 8 Objections and Recommendations Issued to Emergency Rules by Type | 24 |
| TABLE 9 Peremptory Rulemaking by Agency | 26 |
| TABLE 10 Objections and Recommendations Issued to Peremptory Rules by Agency | 26 |
| TABLE 11 Objections and Recommendations Issued to Peremptory Rules by Type | 26 |
| TABLE 12 Comparison of General Rulemaking by Agency 1980 through 1989 | 49 |
| TABLE 13 Comparison of Emergency Rulemaking by Agency 1982 through 1989 | 54 |
| TABLE 14 Comparison of Peremptory Rulemaking by Agency 1982 through 1989 | 57 |

INTRODUCTION

The Joint Committee on Administrative Rules was created by the Illinois General Assembly in 1977 as a mechanism for legislative oversight of the rulemaking process in Illinois. The Illinois Administrative Procedure Act summarizes the Joint Committee's role as the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." This provision established the Joint Committee's two major functions: (1) working with State agencies to improve the rulemaking process and agencies' rules, and (2) promoting public understanding of rules and the rulemaking process.

The Joint Committee was established as a legislative support services agency by the Legislative Commission Reorganization Act of 1984. The Joint Committee's principal programs and activities include:

- Review of general rulemakings within statutory time periods to ensure that new rulemaking proposals are within the agency's statutory authority, are legally proper, and meet the procedural requirements of the Illinois Administrative Procedure Act.
- Review of emergency and preemptory rulemakings to ensure that these rules comply with the statutory requirements because these rules are not subject to the public comment period.
- Review of agency rules and policies to determine whether agency rules have been properly promulgated, and whether rules are unauthorized or unreasonable, or result in serious impact upon the public.
- Public Act review to determine the necessity for new or amendatory rulemaking in response to legislative changes.
- Legislative activities which ensure that the requirements of the Illinois Administrative Procedure Act are followed.
- Publication of Illinois Regulation, a weekly newsletter that highlights State agency rulemaking activities.

This Annual Report contains a narrative of the Joint Committee's activities during 1989, as well as a statistical summary of the rulemaking activities of State agencies. It also includes a summary of legislation drafted and sponsored by the Joint Committee, including legislation amending the Illinois Administrative Procedure Act, that was passed during the 1989 session of the 86th General Assembly. All Joint Committee legislation is the result of the review of State agency rules. Appendix A contains a historical overview of the Joint Committee as well as pertinent historical statistics, and Appendix B provides the most recent version of the Illinois Administrative Procedure Act.

Information about the operations of the Joint Committee, and about State agency rules and rulemakings, are supplied to individual members of the General Assembly, members of the public, lobbyists, and organizations upon request. Requests include copies of rules, hearing transcripts, or status information regarding certain rules or types of rules. This information is transmitted promptly to the requesting entity.

MEMBERSHIP

The Joint Committee on Administrative Rules consists of twelve members who are appointed by the legislative leadership. Membership is equally apportioned between the two houses and the two political parties. Two co-chairmen are selected by the members of the Joint Committee. The co-chairmen cannot be members of the same house or the same political party. The members also select a vice-chairman and a secretary.

The members receive no compensation for their services, but are reimbursed for travel expenses. The Joint Committee maintains a full-time staff in Springfield. Legislators who presently serve on the Joint Committee are listed on the first page of this report.

Former members of the Joint Committee are:

| | |
|--------------------|--------------------------|
| Arthur L. Berman | Thaddeus "Ted" Lechowicz |
| Prescott E. Bloom | Larry Leonard |
| Glen L. Bower | Richard Luft |
| Jack E. Bowers | John W. Maitland, Jr. |
| Woods Bowman | Lynn Martin |
| John Cullerton | John M. Matejek |
| Michael Curran | Roger McAuliffe |
| Richard M. Daley | A. T. "Tom" McMaster |
| Vince Demuzio | Myron J. Olson |
| James H. Donnewald | David J. Regner |
| Jim Edgar | Jim Reilly |
| James Gitz | Philip J. Rock |
| Alan J. Greiman | George Sangmeister |
| Kenneth Hall | Frank D. Savickas |
| Carl E. Hawkinson | Sam Vinson |
| Jeremiah E. Joyce | Richard A. Walsh |
| Douglas N. Kane | Robert C. Winchester |
| Richard Kelly, Jr. | Kathleen Wojcik |
| Bob Kustra | Harry "Bus" Yourell |

The first part of the paper discusses the importance of the study and the objectives of the research. It also outlines the methodology used in the study and the results obtained. The second part of the paper discusses the implications of the study and the conclusions drawn from the research.

The study was conducted in a laboratory setting and the results were compared with those obtained from previous studies. The study found that the results were consistent with those obtained from previous studies and that the methodology used in the study was effective.

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REVIEW OF GENERAL RULEMAKING

State agencies proposed 589 general rulemakings during 1989. (See Table 1 for a breakdown of general rulemakings by agency, and Table 12 for a comparison of general rulemaking from 1980 through 1989). The Joint Committee issued 59 objections and 28 recommendations to general rules (See Table 2) during the same period. The Joint Committee also issued 8 objections to existing rules (See Table 4). Review of the rules by the Joint Committee resulted in changes to the vast majority of the proposals. The changes varied from minor drafting and editing revisions to extensive, substantive rewrites of rules. This section of the report explains the general rulemaking process and the criteria used by the Joint Committee in evaluating rules. Also included is a summary of some of the significant general rulemakings considered by the Joint Committee in 1989.

General Rulemaking Process

Section 3.09 of the Illinois Administrative Procedure Act defines "rule" as:

each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulemakings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms.

Rules must be promulgated pursuant to the Illinois Administrative Procedure Act in order to be enforced by a State agency. There are three methods for promulgating a rule. The first method is specified in Section 5.01 of the Act. Section 5.01(a) explains the "first notice," or public notice and comment requirements. Agencies must publish the text of proposed rules in the Illinois Register, a weekly publication of the Office of the Secretary of State, and accept public comments on the rulemaking for the length of time specified in the notice which must accompany the text. At least 45 days' notice of the intended rulemaking action must be given to the public. This time is called the "first notice period," and it begins on the day that the notice of general rulemaking appears in the Illinois Register. The primary purpose of the first notice period is to provide the regulated public with an opportunity to review and comment upon the rulemaking proposal.

Some agencies hold public hearings on their proposals in order to solicit comments. Section 5.01 also provides that agencies must hold public hearings whenever the agency finds that a hearing would elicit public comments which might not otherwise be submitted, or if a request for a hearing is made by 25

interested persons, an association representing at least 100 persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government, and is received by the agency within 14 days after publication of the rulemaking in the Illinois Register.

After the expiration of the "first notice period," agencies are required to submit the proposed rules, along with any changes made in these rules during the first notice period, to the Joint Committee for review. Agencies submit this information in the form of a "second notice," which must include the text and location of any changes made in the rule, a final regulatory flexibility analysis, which reports the effects of the rule on small businesses, an evaluation of comments received regarding the rule during the first notice period, an analysis of the anticipated effects of the rule, the justification and rationale for the rule, and, if requested by the Joint Committee, an analysis of the economic and budgetary effects of the rule.

The Joint Committee reviews the rule based upon the criteria outlined in the Committee's Operational Rules (1 Ill. Adm. Code 220). These criteria include legal and rulemaking authority, compliance with legislative intent and statutory authority, compliance with State and federal constitutions and other laws, adequacy of standards and criteria for the exercise of discretionary powers, clarity, consideration of the economic and budgetary effects of the rule, compliance with the Regulatory Flexibility Law and the Illinois Administrative Procedure Act, and compliance with the agency's rulemaking requirements. Pursuant to these review criteria, the Joint Committee raises issues regarding the rules.

If all issues are resolved, the Joint Committee will certify no objection to the rule, which enables the agency to adopt the rule by publication of the rule in the Illinois Register and filing an official copy of the rule with the Office of the Secretary of State. If the issues are not resolved, they are presented in the form of recommendations for Joint Committee action. The types of action recommended include objection, recommendation, suspension, or legislation. Table 3 breaks down the number of objections and recommendations issued by the Joint Committee by type. If objections are voted by the Joint Committee, they are published in the Illinois Register and the agency must respond to the objection within 90 days by modifying the rule, refusing to modify the rule, or withdrawing the rule. The response must be presented to the Joint Committee and be published in the Illinois Register. Agency responses may result in additional Joint Committee action. This action often results in an objection to an existing rule because agencies may adopt rules following submission of a response to the Joint Committee. Agencies are also requested to respond to Joint Committee recommendations. Responses to recommendations are published in the Illinois Register and evaluated by the Joint Committee.

General Rulemaking in 1989

Fifty-nine State agencies proposed 589 general rulemakings in 1989 (See Table 1). The Pollution Control Board adopted more general rules than any other State agency (12% of the total). Other State agencies with a great deal of

rulemaking activity included the Department of Public Aid (11.4%), the Department of Public Health (7.6%), the Department of Conservation (6%), the Secretary of State (5.3%), and the Department of Rehabilitation Services (4.6%).

Table 3 breaks down the Joint Committee's objections and recommendations to general rulemakings by type. The most common objection to general rules is that general rulemaking violated Section 4.02 of the Illinois Administrative Procedure Act, which requires State agencies to include precise standards in rules which implement discretionary authority. The Joint Committee issued 15 objections (25% of the total) on this basis in 1989. Two other common objections were that the general rulemaking violated general rulemaking procedures, or lacked statutory authorization. These types of objections accounted for 24% and 19% of the total objections respectively. The most common recommendation issued in 1989 occurred when the Joint Committee recommended that an agency submit policy that is not currently in rules and a timetable for rulemaking to the Joint Committee. Thirteen recommendations (46.4% of the total) were issued on this basis. Another common recommendation (32.2% of the total) generally issued in conjunction with an objection based upon lack of, or conflict with, statutory authority, was that the agency seek legislation to remedy the problem.

Table 4 breaks down the Joint Committee's objections to existing rules by agency, and Table 5 breaks down these objections by type. The Joint Committee issued 8 objections to existing rules. Seven of those objections were issued because the rules conflict with the authorizing statute. The remaining objection was based on the rulemaking violating general rulemaking procedures.

The text of the objections and recommendations issued by the Joint Committee to general rules and rulemakings during 1989 is included in another Committee publication entitled 1989 Index of Objections and Recommendations.

Significant General Rulemakings

Summarized in this section are several of the most important general rulemakings and Joint Committee objections and recommendations issued in 1989.

Department of Children and Family Services

The Department of Children and Family Services proposed rules entitled "Licensing Standards for Group Day Care Homes" (89 Ill. Adm. Code 408). These rules provide licensing standards for "group day care homes", which are facilities that provide care for 3 to 12 children under 12 years of age, in a family home for less than 24 hours per day. In addition to prescribing license application procedures, the rule standards set requirements for fire safety and sanitation, physical space and equipment, admission and discharge procedures, food service and nutrition, health care, adult-to-child ratios, qualifications of caregivers, transportation of children, activity (program),

and records and reports. At its July 28, 1989 meeting, the Joint Committee objected to the Department's rules because the rules violate the legislative intent of the Child Care Act of 1969 by being overly stringent in setting forth a detailed regulatory scheme for a new class of day care providers, when the statute was only amended to increase a day care provider's maximum allowable number of children to enable the provider to provide before and after school care for school-aged children.

The Department when asked to explain why it proposed these rules which establish an entirely new class of day care home providers with accompanying stringent standards when the amendment to the Act was enacted to increase the number of school-aged children for whom day care providers could provide before and after school care, responded that it used the opportunity of a new definition, the group day care home, to create a new Part with a separate set of rules. These rules were seen by the Department as a logical extension of the public act's creation of a new class of day care providers. The Department's arguments for proposing more stringent rules are not borne out by legislative debates, however.

The Department held public hearings on this rulemaking and also received extensive written comment. The Joint Committee itself received extensive comments from day care home providers who vigorously protested these standards. The most commonly protested requirements concerned the allowable staff-to-child ratio, the specificity of physical facility minimums, public liability insurance, educational requirements, imposition of stringent requirements inconsistent with the addition of four more children, and the negative impact of how the Department counts children upon day care home providers who are also foster parents.

The Joint Committee also recommended that the Department submit to the Joint Committee the forms to be used to administer the program. The Joint Committee received and reviewed these forms.

The Department refused to modify its rules in response to the Joint Committee's objection. The Department did, however, indicate a willingness to work with a House task force on rural day care to develop recommendations and proposals.

Department of Employment Security

The Department of Employment Security proposed amendments to rules entitled "Employment" (56 Ill. Adm. Code 2732). The rulemaking governs employment under Section 212 of the Unemployment Insurance Act in order to clarify the difference between an employee and an independent contractor. The rules establish procedures that will be used by the Department in determining whether service performed by an individual for an employing unit is "employment." The rules also list "factors" that indicate that an individual is engaged in an independently established trade, occupation, profession or business. Also set forth are questions that the Department will examine to determine whether "direction and control" of a worker exists.

The Joint Committee issued several objections to this rulemaking at its December 14, 1989 meeting. The Joint Committee objected to the Department's

rules because the Department implemented these rules prior to completion of required rulemaking procedures of the Illinois Administrative Procedure Act, in violation of Section 4(c), 5(a) and 5.01(c) of the Illinois Administrative Procedure Act. The Department previously lacked rules concerning who are covered employees for the purpose of collecting unemployment insurance. Therefore, when the Department began to notify employers that unemployment taxes, interest, and penalties were owed on employees who historically have been considered "independent contractors", confused employers turned to the Joint Committee to investigate the Department's lack of rules for its past or current policy in enforcing Section 212 of the Unemployment Insurance Act. At the Joint Committee's June 14, 1988 meeting, the Joint Committee recommended that the Department immediately promulgate rules to reflect the Department's policy and recommended that the rules not include provisions for retroactive assessment. The Joint Committee also recommended that the Department cease and desist from assessing payment or back-payment of unemployment contributions and penalties against employers until the Department has adopted rules to implement specific standards for Section 212 of the Unemployment Insurance Act. The Department proposed these rules in August of 1989.

The Joint Committee also objected to the Department's rules at its December 1989 meeting because, contrary to the requirements of Section 4.02 of the Illinois Administrative Procedure Act (IAPA), the rules fail to set forth, as precisely and clearly as practicable, the standards the Department will use when determining what other investigations are necessary for the Department to undertake, in order to make the determination of whether services performed by an individual for an employing unit are employment. The Joint Committee also objected because the rules fail to include clear and precise standards to be used in determining what constitutes a shop or office for purposes of determining whether an individual is engaged in an independently established trade, occupation, profession or business.

The Department refused to modify or withdraw its rulemaking for Part 2732. It is the Department's position that there was no prior implementation within the meaning of the terms of the Illinois Administrative Procedure Act. It also took the position that the current rule provided adequate standards.

The Department has indicated to the Joint Committee, as well as to industry and labor, that it will be proceeding with amendments to 56 Ill. Adm. Code 2765 concerning when penalties and interest may be waived by the Department in instances where an employer/employee relationship has been found by the Department. Specifically, this waiver will deal with the area of independent contractors, where an employer/employee relationship is found rather than that of an independent contractor. At this time, the Department has not proposed a regulation dealing with such a waiver of interest or penalty. Therefore, the Joint Committee requested that the Department of Employment Security provide the Joint Committee with a timetable specifying when the Department plans to promulgate amendments to 56 Ill. Adm. Code 2765.

Department of Lottery

In June of 1988, the Department of Lottery repealed its existing rules and proposed new rules entitled "Lottery" (11 Ill. Adm. Code 1770). The rules set forth the methods for licensing agents, as well as the procedures and conditions applicable to licensed agents. The Joint Committee issued eleven objections to the rules at its March 1989 meeting. Several of the objections were issued based on the Department's failure to provide adequate standards for the implementation of discretionary power. The Department lacked standards for determining that the following events have occurred, thereby allowing the Department to revoke a license without prior notice of hearing: (1) that a licensee has been guilty of a felony or any crime involving fraud, misrepresentation, moral turpitude or failure to pay taxes; (2) that a licensee or his agent has been arrested for bookmaking or any other illegal gambling; (3) that the licensee has been found guilty of fraud or misrepresentation; (4) that the agent has commingled and has failed to segregate lottery funds; (5) that the licensee has failed to take reasonable security precautions; (6) that the licensee has ceased to offer lottery products for sale; or, (7) that the licensee's character and general fitness are such that his participation as an agent is inconsistent with the public interest, convenience and necessity.

The rule also failed to state the standards used by the Department in determining whether to deny, revoke or suspend a license after a hearing, as clearly and precisely as is practicable under the conditions to inform fully those affected. The Department declined to prescribe its policy regarding the relative severity of sanctions it will pursue, or the types of offenses warranting such action by means of administrative rules, nor did it enunciate standards by which the affected class may know of the Department's policies. The Department failed to provide standards for licensing determinations such as how the Department will determine that serious or repeated delinquencies may result in suspension or revocation of a license or deactivation of a terminal, how the Department will determine that an agent has failed to segregate Lottery funds, how the Department will determine that delinquencies were reasonably justified, how Department officials will review the status of a delinquent agent's terminal status, and whether rapid revocation is warranted because the Director has determined that termination is in the "best interest of the Lottery." The rule failed to set forth clear and precise standards for determining when the security or integrity of the Lottery will be jeopardized by permitting certain individuals to purchase lottery tickets, also.

The Joint Committee issued several objections to the Department's rules because the rules were incomplete. The issues not set forth in the rules include conditioning licensure on compliance with "directives" or "instructions" issued by the Director; requiring the use of an electronic funds transfer (EFT) system by some parties licensed by the Department without prescribing agency policies relating to payment, collection deadlines, reporting procedures, selection of depository banks or a conversion schedule of licensed agents subject to EFT system requirements; failing to prescribe policies to licensees by administrative rules concerning such topics as ticket returns, commission payments to be paid licensees, payment of bonuses, deposit of funds and filing of reports; and failing to state what forms of identification the Department will accept from individuals claiming prizes of over \$600.00.

The Department's general response to these objections was that the practical effect of deeming that such policies must be filed as rules under Section 5.01 of the Illinois Administrative Procedure Act (IAPA) would be to compel the Department to cease operations of many of its games because changing market conditions and business considerations prevent the Department from adopting such directives or policies as rules within the longer time periods specified in the IAPA. The Department argued that its operations among state government activities are unique, and therefore, the procedures of the IAPA should not be deemed applicable.

Two objections issued were based on the Department's failure to promulgate its policies in a legally valid manner in violation of Sections 4(c), 5(a) and 5.01 of the Illinois Administrative Procedure Act and Sections 7.1 and 7.2 of the Department's governing Act. The Department's policies not set forth in its rules are found in game rules and play instructions. The Department stated that it is not required to adopt such policies in rules. The Department cited in support of its position that the practice in the industry is to adopt "game rules" without compliance with rulemaking procedures. The Department stated that many of its "game rules" are merely instructions, and that marketing and business necessity preclude it from adopting "game rules" via the provisions of the IAPA.

The final objection to the Department's rules was issued because the Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking submitted as a portion of the Department's second notice inaccurately stated that this rulemaking will have no economic effect on the class regulated by this rulemaking. It would appear that this proposed rulemaking, which provides for the payment of millions of dollars of income to its licensees, will have an economic effect on the more than 9,000 licensees regulated by this rulemaking.

The Department responded to the Joint Committee's action by refusing to modify or withdraw its rules. The Department did, however, introduce legislation in the spring of 1989 to specify that any written game rules, play instructions, directives, operations manuals, brochures, or other game publications issued by the Department that relate to a specific lottery game shall be maintained as a public record in the Department's principal office, and made available for public inspection and copying, but shall be exempt from the rulemaking procedures of the Illinois Administrative Procedure Act. The legislation also specified that when such written materials contain policy of general applicability, the Department shall formulate and adopt such policy as a rule. In addition, the Department is required to publish each January in the Illinois Register a list of all game-specific rules, play instructions, directives, operations manuals, brochures, or other game-specific publications issued by the Department during the previous year and instructions concerning how the public may obtain copies of these materials from the Department. This legislation was signed into law on August 30, 1989, and became effective January 1, 1990.

Office of the State Fire Marshal

The Office of the State Fire Marshal proposed amendments to "Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances" (41 Ill. Adm. Code 170). The amendments added several new definitions, provided requirements for underground storage tanks and specified conditions relating to entitlement by owners of underground petroleum storage tanks to monies from the Underground Storage Tank Fund. The amendments also included provisions concerning abandonment of tanks and registration requirements for those who install, repair, remove or test tanks.

The Joint Committee objected to the State Fire Marshal's rules because the rules include heating oil tanks of more than 1,100 gallons capacity in the definition of underground storage tanks contrary to the State Fire Marshal's authorizing statute, the federal Resource Conservation and Recovery Act of 1976, and federal rules. The State Fire Marshal was asked to cite his statutory authority for excluding from the definition of underground storage tank (UST) only those heating oil tanks of 1,100 gallons or less capacity, in light of federal regulations which state that UST does not include "any tank used for storing heating oil for consumptive use on the premises where stored", and which do not include a limit on the capacity of the tank. The State Fire Marshal was also asked to provide authority for requiring heating oil tanks to be subject to fee assessments. The Fire Marshal acknowledged that the federal regulations exclude heating oil tanks, but contended that language in the law stating that state regulations may be "not inconsistent with and at least as stringent as" federal regulations, allows the agency to be more stringent than the federal statute and corresponding regulations. The Fire Marshal interprets "at least as stringent as" to mean that its rules may exceed federal requirements and may regulate UST's not regulated by the United States Environmental Protection Agency. The Joint Committee received extensive public comment concerning this rulemaking and the State Fire Marshal's lack of authority to regulate heating oil tanks.

The Office of the State Fire Marshal adopted a series of amendments to Part 170 in 1989. The Joint Committee also issued objections to those rulemakings concerning the lack of statutory authority to regulate underground heating oil tanks of more than 1,100 gallons. The State Fire Marshal responded in September of 1989 by refusing to modify or withdraw the rules. The Joint Committee voted to approve legislation developed to amend state law to specify that the State Fire Marshal may not regulate heating oil tanks of greater than 1,100 gallons as underground storage tanks unless and until the federal definition of underground storage tank is amended to include such tanks. The State Fire Marshal expressed opposition to the draft legislation. In November of 1989, the Committee voted to request that the State Fire Marshal appear personally before the Committee at its December meeting in order to discuss these issues. Although the State Fire Marshal was unable to attend the meeting, representatives of the State Fire Marshal indicated that the office was willing to seek legislation for specific statutory authority to regulate underground heating oil tanks.

TABLE 1
GENERAL RULEMAKING BY AGENCY

| | |
|--|----|
| Aging, Department on | 4 |
| Agriculture, Department of | 16 |
| Auditor General | 1 |
| Banks and Trust Companies, Commissioner of | 3 |
| Capital Development Board | 2 |
| Carnival-Amusement Safety Board | 2 |
| Central Management Services, Department of | 11 |
| Children and Family Services, Department of | 5 |
| Civil Service System, State Universities | 1 |
| Commerce and Community Affairs, Department of | 17 |
| Commerce Commission, Illinois | 26 |
| Community College Board, Illinois | 5 |
| Comptroller | 2 |
| Conservation, Department of | 35 |
| Cook County Local Records Commission | 1 |
| Corrections, Department of | 8 |
| Criminal Justice Information Authority | 1 |
| Education, State Board of | 10 |
| Educational Facilities Authority, Illinois | 1 |
| Educational Labor Relations Board, Illinois | 5 |
| Elections, State Board of | 7 |
| Employment Security, Department of | 16 |
| Energy and Natural Resources, Department of | 1 |
| Environmental Protection Agency | 8 |
| Experimental Organ Transplantation Procedures Board | 1 |
| Financial Institutions, Department of | 1 |
| Fire Marshal, Office of the State | 4 |
| Governors of State Colleges & Universities, Board of | 1 |
| Health Care Cost Containment Council, Illinois | 1 |
| Health Facilities Planning Board | 7 |
| Hearing Aid Consumer Protection Board | 1 |
| Higher Education, Illinois Board of | 6 |
| Housing Development Authority, Illinois | 1 |
| Insurance, Department of | 13 |
| Investments, State Board of | 1 |
| Labor, Department of | 1 |

TABLE 1
GENERAL RULEMAKING BY AGENCY
(continued)

| | |
|--|-----|
| Local Governmental Law Enforcement Officers Training Board, Illinois | 2 |
| Mental Health and Developmental Disabilities, Department of | 3 |
| Mines and Minerals, Department of | 22 |
| Nuclear Safety, Department of | 8 |
| Pollution Control Board | 71 |
| Professional Regulation, Department of (1) | 15 |
| Property Tax Appeal Board | 1 |
| Public Aid, Department of | 67 |
| Public Health, Department of | 45 |
| Racing Board, Illinois | 5 |
| Records Commission, State | 1 |
| Regents, Board of | 2 |
| Rehabilitation Services, Department of | 27 |
| Retirement System, State Universities | 1 |
| Revenue, Department of | 24 |
| Savings and Loan Associations, Commissioner of | 2 |
| Secretary of State | 31 |
| State Police Merit Board, Department of | 2 |
| Student Assistance Commission, Illinois (2) | 9 |
| Transportation, Department of | 18 |
| Treasurer | 4 |
| Trustees of Southern Illinois University, Board of | 1 |
| Trustees of the University of Illinois, Board of | 2 |
| <hr/> | |
| TOTAL | 589 |

- (1) The Department of Registration and Education became the Department of Professional Regulation in 1988.
- (2) The Illinois State Scholarship Commission became the Illinois Student Assistance Commission in 1989.

TABLE 2
OBJECTIONS AND RECOMMENDATIONS ISSUED TO GENERAL RULEMAKING
BY AGENCY

| Agency | Number of Objections | Number of Recommendations |
|--|-------------------------|------------------------------|
| Aging, Department on | 1 | - |
| Central Management Services, Department of | 1 | - |
| Children and Family Services, Department of | 2 | 3 |
| Civil Service System, State Universities | 2 | - |
| Commerce and Community Affairs, Department of | 1 | 1 |
| Commerce Commission, Illinois | 1 | - |
| Conservation, Department of | 3 | 2 |
| Education, State Board of | 2 | 1 |
| Employment Security, Department of | 3 | 1 |
| Environmental Protection Agency | - | 1 |
| Fire Marshal, Office of the State | 1 | - |
| Housing Development Authority, Illinois | 1 | - |
| Lottery, Department of | 11 | - |
| Mental Health and Developmental Disabilities, Department of | 1 | 3 |
| Military Affairs, Department of | 2 | - |
| Nuclear Safety, Department of | 1 | 1 |
| Pollution Control Board | 3 | - |
| Professional Regulation, Department of | 5 | 4 |
| Property Tax Appeal Board | 1 | 1 |
| Public Aid, Department of | 5 | - |
| Public Health, Department of | 2 | 2 |
| Racing Board, Illinois | 3 | - |
| Regents, Board of | 1 | - |
| Rehabilitation Services, Department of | 4 | 3 |
| Revenue, Department of | 1 | - |
| Secretary of State | 1 | 1 |
| State Police, Department of | - | 2 |
| Student Assistance Commission, Illinois | - | 1 |
| Transportation, Department of | - | 1 |
| TOTAL | 59 | 28 |

TABLE 3
OBJECTIONS AND RECOMMENDATIONS ISSUED TO GENERAL RULEMAKING
BY TYPE

| Type of Objection | Number of Objections | Percentage of Total |
|---|----------------------|---------------------|
| Standards and Criteria | 15 | 25.0% |
| Violates General Rulemaking Procedures | 14 | 24.0% |
| Lack of Statutory Authority | 11 | 19.0% |
| Rules Incomplete | 6 | 10.0% |
| Conflicts with Authorizing Statute | 2 | 3.0% |
| Violates Economic and Budgetary Effects Analysis Requirements | 2 | 3.0% |
| Rules Not Clear/Terminology Vague | 2 | 3.0% |
| Policy Not in Rules | 2 | 3.0% |
| Rules Do Not Reflect Agency Policy | 1 | 2.0% |
| Violates Incorporation by Reference Procedure | 1 | 2.0% |
| Violates Legislative Intent | 1 | 2.0% |
| Rules Unconstitutional | 1 | 2.0% |
| Rules Do Not Adequately Implement Statutory Requirements | 1 | 2.0% |
| TOTAL | <u>59</u> | <u>100%</u> |

| Type of Recommendation | Number of Recommendations | Percentage of Total |
|---|---------------------------|---------------------|
| Submit Policy or Timetable to Joint Committee | 13 | 46.4% |
| Agency Should Seek Legislation | 9 | 32.2% |
| Rulemaking | 5 | 17.9% |
| Petition Agency to Promulgate Rules | 1 | 3.5% |
| TOTAL | <u>28</u> | <u>100%</u> |

TABLE 4
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EXISTING RULES
BY AGENCY

| Agency | Number of Objections | Number of Recommendations |
|-----------------------------------|----------------------|---------------------------|
| Fire Marshal, Office of the State | 7 | - |
| Department of Conservation | 1 | - |
| TOTAL | <u>8</u> | <u>0</u> |

TABLE 5
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EXISTING RULES
BY TYPE

| Type of Objection | Number of Objections | Percentage of Total |
|--|----------------------|---------------------|
| Conflicts with Authorizing Statute | 7 | 87.5% |
| Violates General Rulemaking Procedures | 1 | 12.5% |
| TOTAL | <u>8</u> | <u>100%</u> |

REVIEW OF EMERGENCY AND PEREMPTORY RULEMAKING

The Illinois Administrative Procedure Act includes two provisions which permit agencies to adopt rules by methods other than the general rulemaking process. These methods, emergency and peremptory rulemaking, allow agencies to adopt rules within a shorter period of time than is provided in the general rulemaking process. The use of emergency and peremptory rulemaking, which provides for the immediate implementation of a rule, is scrutinized by the Joint Committee because these processes circumvent the public notice and comment provisions of the Act. Twenty-four State agencies adopted 71 emergency rulemakings during 1989. (See Table 13 for a comparison of emergency rulemaking from 1982 through 1989.) In addition, four State agencies adopted peremptory rulemakings in 1989. (See Table 14 for a comparison of peremptory rulemaking from 1982 through 1989.) The Joint Committee issued 27 objections and no recommendations to emergency rules (Tables 7 and 8) and 1 objection and 1 recommendation to peremptory rules (Tables 10 and 11).

Emergency Rulemaking Process

Section 5.02 of the Act authorizes the use of emergency rulemaking if the promulgating agency determines that a situation exists which threatens the public interest, safety or welfare, and which requires the adoption of a rule on fewer days' notice than is required for general rulemaking. Emergency rules can become effective immediately and can remain in effect for a maximum of 150 days. Agencies which want to keep rules adopted on an emergency basis in effect for a longer period of time must propose and adopt the rule using the general rulemaking provisions of the Act. Certain restrictions are placed upon the use of emergency rulemaking because there is no notice and comment period or prior review by the Joint Committee. First, the emergency rule can only contain those provisions which are in direct response to the emergency situation. Second, an agency cannot adopt an emergency rule that has "substantially the same purpose and effect" more than once in any 24-month period. Third, the agency must inform the affected public of the emergency rule. Through the emergency rulemaking procedures, the Illinois Administrative Procedure Act provides agencies with necessary flexibility to respond to emergency situations, but balances this with the temporary nature of the rule and the restrictions imposed.

Emergency Rulemaking in 1989

Twenty-four State agencies adopted 71 emergency rulemakings in 1989. The Department of Public Aid adopted more emergency rules than any other State agency, with fifteen rules, which accounted for 21% of the total. The Department of Commerce and Community Affairs adopted 8 emergency rules (11% of the total), the Department of Conservation and the Department of Professional Regulation each adopted 6 emergency rules (8.5% of the total). Most emergency rules were justified on the basis of a statutory change, either state or federal, a delay in implementation of which would constitute a threat to the public interest, safety or welfare.

Table 8 breaks down the Joint Committee's objections and recommendations to emergency rulemakings by type. The most common objection to emergency rules, which accounted for 48.2% of the total, was that the State agency which adopted the emergency rule created the emergency either through action or inaction. The Illinois Supreme Court held in Senn Park Nursing Center v. Miller, 104 Ill. 2d 169 (1984), that an agency-created emergency could not justify the use of emergency rulemaking. Another common objection is a violation of the emergency rulemaking procedures. This occurs when there is no threat to the public interest, safety, or welfare which justifies the emergency. The Joint Committee issued 7 objections (29.9% of the total) on this basis in 1989. The Joint Committee also reviews the emergency rules for clear and precise standards and issued 2 objections on the basis that the agency did not have clear standards and criteria set forth in the rule.

The text of the objections and recommendations issued by the Joint Committee to emergency rules and rulemaking during 1989 is included in another Committee publication entitled 1989 Index of Objections and Recommendations.

Significant Emergency Rulemaking

Summarized in this section are several of the most important emergency rulemakings and Joint Committee objections and recommendations issued during 1989.

Department of Revenue

The Department of Revenue adopted emergency amendments to "Tax Increment Allocation Financing" (86 Ill. Adm. Code 525) in April 1989. The rule sets forth policies concerning the Department's determination of continued eligibility for state sales tax distribution to participating municipalities for redevelopment projects or plans. The policies set forth in the rule include sending a preliminary notice of deficiency, how to respond to that notice, and the procedures for a Final Notice of Deficiency. The rule also sets forth factors to be considered in determining whether an area meets the definition of "blighted area" or "conservation area". These factors include age, dilapidation, obsolescence, deterioration, illegal use of individual structures and excessive vacancies.

The Joint Committee issued several objections to this rule in June of 1989. One objection was issued because the emergency situation requiring rulemaking was agency-created. The public act requiring rulemaking became law nine months prior to the adoption of the emergency rule, which was ample time to promulgate rules through the general rulemaking process. The Joint Committee objected that the rules were incomplete, as the Department has numerous policies pertaining to its administration of this program not contained in the Department's rules which are found in the Department's 1988 TIF Guide. The Department's rules were also incomplete because the rules fail to state the evidence accepted by the Department by which a municipality may prove that "deferred maintenance" in structures is present, and that there is a lack of application of "appropriate planning procedures" by a municipality.

The Joint Committee also objected to the Department's rules because, in violation of Section 4.02 of the IAPA, the Department failed to provide adequate standards. The Department did not provide standards governing how it will make a finding that eligibility factors and conditions are present to a "meaningful extent" and are "reasonably distributed" within a redevelopment project area; how the Department will make a finding that such factors as "presence of structures below minimum code standards", "illegal use of individual structures", "lack of ventilation, light or sanitary facilities", "over-intensive use of property" and "deleterious land-use or layout" have been established or are in violation of local codes; or how it will determine that "multiple omissions of individual parcels within a sales tax boundary" have occurred, that parcels are in "substantial proximity" to, and are "beneficially affected" by, a redevelopment project area, "significant private development had occurred", and that a "reasonable basis exists for distinguishing the development potential" of a project. The Department did not respond to the Joint Committee's objections. The emergency rule expired on September 9, 1989. The Department proposed an identical general rulemaking in July of 1989.

TABLE 6
EMERGENCY RULEMAKING BY AGENCY

| | |
|--|----|
| Aging, Department on | 1 |
| Agriculture, Department of | 1 |
| Carnival-Amusement Safety Board | 1 |
| Central Management Services, Department of | 3 |
| Commerce and Community Affairs, Department of | 8 |
| Commerce Commission, Illinois | 2 |
| Conservation, Department of | 6 |
| Criminal Justice Information Authority, Illinois | 1 |
| Education, State Board of | 2 |
| Educational Labor Relations Board, Illinois | 1 |
| Employment Security, Department of | 5 |
| Environmental Protection Agency | 1 |
| Fire Marshal, Office of the State | 3 |
| Higher Education, Illinois Board of | 1 |
| Insurance, Department of | 1 |
| Investments, State Board of | 1 |
| Professional Regulation, Department of | 6 |
| Public Aid, Department of | 15 |
| Public Health, Department of | 3 |
| Racing Board, Illinois | 1 |
| Rehabilitation Services, Department of | 4 |
| Revenue, Department of | 2 |
| Secretary of State | 1 |
| State Police Merit Board, Department of | 1 |
| | — |
| TOTAL | 71 |

TABLE 7
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EMERGENCY RULEMAKING
BY AGENCY

| Agency | Number of Objections | Number of Recommendations |
|-----------------------------------|-------------------------|------------------------------|
| Aging, Department on | 1 | - |
| Central Management Services, | | |
| Department of | 1 | - |
| Conservation, Department of | 2 | - |
| Fire Marshal, Office of the State | 1 | - |
| Insurance, Department of | 1 | - |
| Professional Regulation, | | |
| Department of | 2 | - |
| Public Aid, Department of | 10 | - |
| Public Health, Department of | 1 | - |
| Rehabilitation Services, | | |
| Department of | 2 | - |
| Revenue, Department of | 5 | - |
| State Police Merit Board, | | |
| Department of | 1 | - |
| TOTAL | <u>27</u> | <u>0</u> |

TABLE 8
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EMERGENCY RULES
BY TYPE

| Type of Objection. | Number of Objections | Percentage of Total |
|---|-------------------------|------------------------|
| Agency Created Emergency Violates Emergency Rulemaking Procedures | 13 7 | 48.2% 25.9% |
| Standards and Criteria | 2 | 7.4% |
| Lack of Statutory Authority | 1 | 3.7% |
| Conflicts with Authorizing Statute | 1 | 3.7% |
| Incomplete Rules | 1 | 3.7% |
| Policy Not in Rules | 1 | 3.7% |
| Portions of Rulemaking Not Related to Emergency | 1 | 3.7% |
| TOTAL | <u>27</u> | <u>100%</u> |

Peremptory Rulemaking Process

Section 5.03 of the Act authorizes the use of peremptory rulemaking only in very restricted circumstances. Rules adopted by use of peremptory rulemaking may become effective immediately, and remain in effect indefinitely. Certain restrictions are placed upon the use of peremptory rulemaking because there is no notice and comment period or prior review by the Joint Committee.

First, peremptory rulemaking can be used only if the rulemaking is specifically required by federal law, federal rules and regulations, court order, or in the case of pay rates, a collective bargaining agreement. Second, the federal law, federal rules and regulations, court order, or collective bargaining agreement must impose conditions which preclude compliance with the general rulemaking requirements. Third, the agency must not have any discretion regarding the content of the rule. Fourth, a notice of peremptory rulemaking must be filed with the Secretary of State for publication in the Illinois Register within 30 days after the change is required.

Peremptory Rulemaking in 1989

Only four agencies adopted ten peremptory rules in 1989. The Department of Agriculture's use of peremptory rulemaking during 1989 accounted for 50% of the total peremptory rulemakings adopted during the year. All peremptory rulemakings adopted by the Department of Agriculture amended the "Meat and Poultry Inspection Act" rules (8 Ill. Adm. Code 125). Peremptory rulemaking was required because the federal Meat and Poultry Inspection Act and the Illinois Act require the Department's rules to mirror federal regulations.

The Department of Central Management Services adopted 3 peremptory rulemakings (30% of the total) in 1989. Peremptory rulemaking was necessary to implement the terms of contracts resulting from collective bargaining agreements. The Joint Committee issued one recommendation to "Pay Plan" in January 1989, requesting that the Department provide the Joint Committee with a copy of the collective bargaining agreement which required the promulgation of the peremptory rules.

The Department of Transportation peremptorily adopted rules entitled "Relocation Assistance and Payments Program" (92 Ill. Adm. Code 518), concerning the prompt and equitable relocation and reestablishment of persons, businesses, farming operations and nonprofit organizations displaced by the acquisition of rights-of-way for State highway construction projects. The rule established procedures for relocation services, moving cost payments, replacement housing cost payments, and other expenses to mitigate the injury suffered by such displacement. The Joint Committee objected to the Department's peremptory rulemaking in July 1989 because the Department's use of peremptory rulemaking violated Section 5.03 of the Illinois Administrative Procedure Act in that much of the rulemaking was not required under conditions which precluded the use of general rulemaking procedures.

TABLE 9

PEREMPTORY RULEMAKING BY AGENCY

| | |
|--|----------|
| Agriculture, Department of | 5 |
| Central Management Services, Department of | 3 |
| Public Aid, Department of | 1 |
| Transportation, Department of | <u>1</u> |
| TOTAL | 10 |

TABLE 10

OBJECTIONS AND RECOMMENDATIONS ISSUED TO PEREMPTORY RULES
BY AGENCY

| Agency | Number of Objections | Number of Recommendations |
|---|-------------------------|------------------------------|
| Central Management Services, Department of | - | 1 |
| Transportation, Department of | 1 | - |

TABLE 11

OBJECTIONS AND RECOMMENDATIONS ISSUED TO PEREMPTORY RULES
BY TYPE

| Type of Objection | Number of Objections | Percentage of Total |
|--|-------------------------|------------------------|
| Violates Peremptory Rulemaking Procedures | 1 | 100% |

| Type of Recommendation | Number of Recommendations | Percentage of Total |
|---|------------------------------|------------------------|
| Submit Policy/Timetable to Joint Committee | 1 | 100% |

ECONOMIC IMPACT REVIEW

In January of 1988, the Joint Committee began including a review of economic impact forms for each rulemaking on the agenda of its monthly meetings. These forms fall into three categories: (1) an analysis prepared by the agency of the economic impact of a proposed rule on the regulated public and the agency's budget, (2) a determination by the agency and also by the Department of Commerce and Community Affairs concerning whether the proposed rule creates or expands a state mandate, and (3) an analysis by the Department of Commerce and Community Affairs of the impact of the proposed rule on small businesses and small municipalities.

The Illinois Administrative Procedure Act grants the Joint Committee the authority to request from the agency an analysis of the "effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues". The Agency Analysis of Economic and Budgetary Effects form is used to ascertain the effects a rulemaking may have on these persons or entities. This form is requested of the agency by the Joint Committee during the first notice period. The agency submits the completed analysis at the beginning of the second notice period.

The Illinois Administrative Procedure Act also requires agencies to consider the impact a rulemaking may have upon small businesses and small municipalities. The Business Assistance Office within the Department of Commerce and Community Affairs analyzes rulemakings for small business impact at the request of the agency. The Department of Commerce and Community Affairs then submits its small business impact analysis to the Joint Committee at the beginning of the second notice period. Although Section 46.19d of "The Civil Administrative Code" requires the Office of Rural Community Development within the Department of Commerce and Community Affairs to "assess the fiscal impact of proposed rules upon small municipalities and work with agencies in developing flexible regulations through a regulatory review program", the Department does not analyze rulemakings for small municipality impact. In fact, the Department's proposed rules which would have implemented the statute requiring small municipality impact analysis were allowed to lapse by the Department. The Department stated that the reason for allowing these rules to lapse was that the Office of Rural Community Development, which is responsible for small municipality impact, is not currently funded or staffed.

If it appears during the first notice period that a rulemaking creates or expands a state mandate, the Joint Committee requests the agency to complete a State Mandates Questionnaire, which is used to determine if any such impact exists. The Joint Committee, at this time, also requests the Department of Commerce and Community Affairs to submit an analysis of possible impact upon state mandates. These analyses are submitted prior to, or at the beginning of, the second notice period. Joint Committee staff examines the economic analyses for each rulemaking during the second notice period. The review is then presented to the Joint Committee for consideration at its monthly meeting.

COMPLAINT REVIEW PROGRAM

Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act grant the Joint Committee the authority to review agency rules and policies. Section 7.04 allows the Joint Committee to "undertake studies and investigations concerning rulemaking and agency rules" and requires that the Committee "monitor and investigate" agency compliance with the provisions of the Illinois Administrative Procedure Act, "make periodic investigations of the rulemaking activities of all State agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy." Section 7.07 of the Act authorizes the Joint Committee to issue objections to existing rules and assigns to the Committee the task of examining "any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form."

Part 260 of the Joint Committee's Operational Rules (1 Ill. Adm. Code 260), outlines the complaint review procedure. Upon receipt of a complaint, an initial review is conducted to determine the need for a full complaint investigation. Most of the inquiries received by the Joint Committee require basic information, such as copies of rules, explanations of the rulemaking process, or referrals to appropriate agencies. These inquiries are easily answered without a full investigation. Others, however, require more extensive research and study prior to formal Joint Committee action.

No formal complaint reviews were commenced in 1989. Two complaints involving the Department of Employment Security and the State Board of Education that were acted upon in 1989 are summarized below.

1988-89 COMPLAINTS

Department of Employment Security

In December 1987, the Joint Committee began an investigation of a complaint lodged against the Department of Employment Security. The complaint alleged that the Department had recently altered a longstanding policy and had begun to require that newspapers and publishing companies pay unemployment contributions on behalf of newspaper carriers over age eighteen and individuals engaged in various types of free-lance work for these companies. There had been no recent changes in state law or rules, or federal law or rules that would explain a change in the Department's policy regarding what services constitute covered employment. And yet, a change of policy apparently occurred in 1986, when the Department began to require for the first time that unemployment compensation be paid on behalf of adult newspaper carriers and individuals engaged in free-lance work for newspapers. According to the complainant, the Department threatened to impose fines and as much as four years in back payments plus interest in some cases. The Joint Committee considered this issue at its June 14, 1988, meeting and voted to recommend that the Department immediately amend its rules concerning unemployment insurance to include relevant Department policies governing who are covered employees for the purposes of

unemployment insurance. The Joint Committee also recommended that the Department cease and desist from assessing payment or back-payment of unemployment contributions and penalties against employers whose employees have not historically been considered covered. The Joint Committee further recommended that the Department not make such rules retroactive. On September 14, 1988, the Department responded that the Director has no authority to waive Unemployment Insurance contributions owed the State and, therefore, the Department must refrain from such rulemaking. The Department further responded that the Employment Security Advisory Board would review Section 212 of the Act and hold public hearings. The Board would then decide whether or not to proceed through the agreed bill process.

After receiving the Department's response, the Joint Committee requested that the Governor's Office take a direct role in working toward a solution to this complaint. The Deputy Governor met with the Joint Committee Co-Chairmen, Executive Director, and staff on November 16, 1988, to discuss the complaint. The Employment Security Advisory Board also held a hearing on November 30, 1988, to elicit public comment on the Department's policy. Several new issues were raised at these meetings.

The Joint Committee again considered this issue at its December 15, 1988 meeting. The Joint Committee voted to request information from the Governor's Office concerning the estimated tax liability placed on state governments, units of local government and businesses in the private sector as a result of the Department's recent audit determinations. The Joint Committee also requested that the Governor's Office provide the Joint Committee with a copy of the Department's draft regulation which provided that the Director of the Department would forgive interest and penalties in these circumstances. The Joint Committee further requested that the Governor's Office provide a copy of the legal opinion of the Governor's Office concerning the Joint Committee's recommendations of June 14, 1988.

Negotiations concerning this issue continued in 1989, and the Department proposed rules entitled "Employment" (56 Ill. Adm. Code 2732) on August 4, 1989, to define in rules the standards used by the agency to determine what constitutes employment under Section 212 of the Unemployment Insurance Act. The Joint Committee reviewed these rules at its December 1989 meeting and issued three objections to them based upon inadequate standards. Additionally, the Committee noted that further rulemaking was needed to establish grounds for waiver of interest and penalties for employing units which have been found to have employees performing services rather than independent contractors. A timetable specifying the Department's schedule for proposing these additional rules was requested. Thus, as the end of 1989, rules have been promulgated to clarify for both employers and employees how the Department of Employment Security will determine who is an independent contractor. Further rulemaking remains to be done in 1990.

State Board of Education

In October 1988, the Joint Committee began an investigation of the State Board of Education's regulations entitled "Disadvantaged Students Funds Plan -- Districts Over 50,000 ADA" (23 Ill. Adm. Code 202). The complaint alleged that the Board's rules were inadequate to insure that the state

weighted funds for disadvantaged students were being properly spent by the Chicago School District. The Chicago School District is the only district with over 50,000 average daily attendance (ADA) and, under the School Code, the Chicago School District must submit a plan for the Board's approval delineating the spending of the funds. At the time this complaint was initiated, the Board "targeted" sixty percent of the funds pursuant to Section 18-8(5)(i)(1) of the School Code (Ill. Rev. Stat. 1987, ch. 122, par. 18-8(5)(i)(1)). The targeted funds are distributed to attendance centers based on the number of students eligible for the free lunch and breakfast programs, and it is the targeted funds that the Board follows to insure proper spending. Since the initiation of the complaint, the General Assembly passed, and the Governor signed, PA 85-1418. The public act amends Section 18-8(5)(i)(1) of the Code to require that one hundred percent rather than sixty percent of the weighted funds for disadvantaged students be targeted through phasing in increases over the next four years.

On August 25, 1989, the State Board of Education adopted emergency rules for Part 202 concerning the disadvantaged students funds plan. The State Board initiated a regular proposed rulemaking, also. The rules set forth the various definitions needed to ensure that plans to meet the educational needs of disadvantaged students incorporate and reflect the eventual expenditure of State Chapter 1 funds for supplemental programs only. The rules differentiate between regular and basic programs and supplemental programs, and describe the procedures and timelines for filing the plans. The required plan content is set forth, including the display of calculations demonstrating that proposed allocations of funds meet the law's requirements. The rules set forth standards for the State Board's approval of the plans, as well as describe the enforcement procedures to be followed if plans are not submitted, modified, or approved in accordance with these rules. The rules also describe the monitoring approach to be used by the Board. The Joint Committee is scheduled to review the proposed rules in January of 1990.

PUBLIC ACT REVIEW

Section 7.05(3) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1007.05) provides that the Joint Committee will maintain a review program to study the impact of legislative changes on agency rules and rulemaking. The Joint Committee fulfills this statutory obligation through its public act review program. Under this program, the Joint Committee staff reviews each public act filed during the year to determine whether the public act may possibly impact upon current agency rules or may require new rules. If it is determined that rulemaking may be needed, a letter and response form are sent to each such agency asking whether the agency has determined that rulemaking is necessary and the status of any such rulemaking. The Joint Committee then monitors the agency's progress in fulfilling the rulemaking requirement. A primary goal of the Joint Committee in this program is to ensure that the rulemaking is implemented in a timely manner, as required by Section 8 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1008).

1989 LEGISLATIVE ACTIVITY

The passage of legislation that clarifies, as well as upholds, the intent of the General Assembly is a priority of the Joint Committee. The Joint Committee also sponsors legislation to amend the Illinois Administrative Procedure Act to improve the oversight process for State agencies in Illinois. The Joint Committee's 1989 legislative initiatives resulted in passage of eight public acts during 1989, each reflecting issues addressed by the Joint Committee throughout the past twelve months. Amendments reflective of Joint Committee positions were also added to several agency bills that were enacted into law. Summaries of these eight public acts are included below. Also included is Public Act 86-874, which was not sponsored by the Joint Committee. An agreement was reached with the sponsors of this bill to allow language from the Joint Committee's bill concerning vote tabulation equipment to be included in House Bill 2704 that resulted in Public Act 86-874.

House Bills 1663 and 1670, P.A. 86-365

House Bill 1663 was amended on to House Bill 1670. The bill amends the Environmental Protection Act to specify that local governments will provide 30 percent matching funds for grants for construction of public water supplies. The bill also provides that such grants shall not be terminated except by standards set forth in rules adopted by the Environmental Protection Agency. The Agency is also required to promulgate rules setting forth standards in relation to grants to local governments in planning for the management of nonhazardous solid waste.

House Bill 1666, P.A. 86-977

House Bill 1666 is an agreed bill containing amendatory language concerning the Department of Revenue, Property Tax Appeal Board, and the Commissioner of Banks and Trust Companies. Senate Amendment No. 1, sponsored by Senator Topinka, adds a provision amending the Illinois Income Tax Act to specify that any payment to the Department of Revenue which is made by a check or money order not payable to the Department shall, within 15 days after receipt thereof, be returned by the Department to the taxpayer who submitted such check or money order or, if the amount of payment is equal to the amount owed to the State on the return filed with such check, the Department may deposit such check.

House Bill 1666 passed the General Assembly with no opposition, but was amendatorily vetoed to clarify the language added by Senate Amendment No. 1 concerning tax payments to the Department of Revenue. The General Assembly accepted the specific recommendations for change and the bill became law.

House Bill 1664, P.A. 86-874

House Bill 1664 amends the Election Code concerning an election jurisdiction which, as of January 1, 1983, used an electronic voting system which is incapable of performing a post-tabulation test in which all components tested, including the disks on which the system software is contained, must be the actual components used in tabulating votes. The bill provides that such a jurisdiction shall be exempt from the post-tabulation testing requirement until the voting system is replaced or until November 1, 1992, whichever is earlier. House Bill 1664 was amended to House Bill 2704, which has become P.A. 86-874.

House Bill 1665, P.A. 86-597

House Bill 1665 amends "An Act creating the Department of Children and Family Services" to provide that the Department may delegate its duty to maintain and make available lists of persons who have been approved for adoption of hard-to-place or handicapped children, provided that the Department's agent maintains the confidentiality required.

House Bill 1671, P.A. 86-598

House Bill 1671 amends Section 5-5 of the Health Maintenance Organization Act to require the Department of Public Health to promulgate the standards used to determine what constitutes a material misrepresentation, a material violation of a contract or evidence of coverage, or good faith. It also provides that the Department's examination fee for HMO's shall consist of a fixed fee plus an additional fee based on enrollment in the HMO.

House Bill 1673, P.A. 86-599

House Bill 1673 amends the Illinois Administrative Procedure Act to provide that an agency that incorporates materials into its rules by reference need not make the incorporated materials available for copying if in so doing the agency would infringe upon another entity's copyright. The current statutory provision that incorporated material must be available to the public from the source of the material remains unchanged. This bill was introduced to remove a possible conflict for agencies whereby their compliance with the Illinois Administrative Procedure Act would result in violation of copyright laws.

Senate Bill 725, P.A. 86-733

Senate Bill 725 amends the Abused and Neglected Child Reporting Act to specify that the Department of Children and Family Services shall provide to the temporary caretaker of a child any information in the Department's possession concerning the positive results of a test performed on the child to determine the presence of the antibody or antigen to HIV, or of HIV infection, as well as any communicable diseases or communicable infections that the child has. The bill also amends the Abused and Neglected Child Reporting Act to prohibit the temporary caretaker from disclosing to another person any information received by the temporary caretaker from the Department concerning the

results of such a test performed on the child except as provided in Section 9 of the AIDS Confidentiality Act. The bill also adds the same provision to the AIDS Confidentiality Act.

Senate Bill 726, P.A. 86-734

Senate Bill 726 requires the State Board of Education to provide, by rule, policies for assuring that difficulty levels for each form of the required teacher certification test of basic skills and subject matter knowledge are uniform from test-to-test and year-to-year, and to require the Board to set a passing score.

Senate Bill 727, P.A. 86-203

Senate Bill 727 amends the applicability clause of the Illinois Administrative Procedure Act (IAPA) to clarify the Pollution Control Board's exemptions from the rulemaking procedures of the IAPA. These exemptions currently appear in the Environmental Protection Act, and have been set forth in the IAPA to clarify the applicability of the IAPA to the rulemaking procedures of the Pollution Control Board.

RESEARCH AND SPECIAL REPORTS

EXEMPTIONS FROM THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

The Illinois Administrative Procedure Act became effective September 2, 1975, and since that time one hundred thirty-four exemptions to the Illinois Administrative Procedure Act have been added to the Illinois statutes. Although many of these exemptions are repetitive, twenty state agencies, plus colleges and universities, have one or more exemptions from the rulemaking procedures of the Illinois Administrative Procedure Act. Currently, only seven of the one hundred thirty-four exemptions to the Illinois Administrative Procedure Act are found in the Act itself. The remaining exemptions are spread throughout the statutes. The rules that result from these exemptions are not reviewed through the Joint Committee monthly review process except to ensure that the rules meet the requirements of the exemptions cited.

During the 1988 spring session of the General Assembly, the Joint Committee, in concert with the Pollution Control Board, examined certain exemptions from the Illinois Administrative Procedure Act commonly used by the Board. Senate Bill 1834 (P.A. 85-1048), which resulted from this effort, streamlined the rulemaking procedures of the Board, while at the same time better integrating those procedures with the Illinois Administrative Procedure Act. During the 1989 spring session, the Joint Committee introduced Senate Bill 727 (P.A. 86-203) to amend the applicability clause of the Illinois Administrative Procedure Act to include the exemptions of the Board.

As a result of the Joint Committee's review of PCB exemptions and the resultant improvements in the Board's rulemaking procedures, a comprehensive review of all other current exemptions to the Illinois Administrative Procedure Act was undertaken in 1989. The need for further exemptions, if any, was also examined. The Joint Committee appointed a subcommittee to hold a series of hearings during the summer and fall of 1989 to give agencies an opportunity to discuss with the subcommittee the retention or deletion of existing exemptions to the Illinois Administrative Procedure Act and also the need to create any new exemptions.

The goal of the subcommittee throughout the meetings has been to produce an agreed bill that would amend the applicability clause of the Illinois Administrative Procedure Act to include all current exemptions to the Act and delete obsolete exemptions so that the Illinois Administrative Procedure Act would accurately reflect how the rules review process works. The most recent subcommittee meeting was held December 13, 1989, and the subcommittee plans one additional meeting on February 8, 1990. A draft bill has been written by the subcommittee with advice from the affected agencies and, after further refinement, will be introduced during the 1990 spring session of the General Assembly. This comprehensive bill is designed to clarify the applicability of the Illinois Administrative Procedure Act rather than leave provisions concerning applicability of the Act scattered throughout the statutes.

PUBLICATIONS OF THE JOINT COMMITTEE

In an attempt to aid state agencies in promulgating rules, and members of the general public in understanding rules and the rulemaking process, the Joint Committee offers the following publications:

Illinois Regulation, the Joint Committee's weekly publication summarizing the regulatory changes of State agencies, is currently distributed to all members of the General Assembly, State agency rules coordinators, lobbyists, businesses, chambers of commerce, libraries, government agencies, law firms, and others who are interested in rulemaking. The publication summarizes proposed and adopted rules according to subject area. Illinois Regulation is the result of the Regulatory Flexibility Law which became effective in 1982 and which required agencies to provide some flexibility in rules imposing a burden upon small businesses. In order to implement this law, small businesses are encouraged to raise issues and to suggest alternatives to rulemakings proposed by State agencies. The publication has also been expanded to include a summary of action taken by the Joint Committee at each monthly meeting of the Committee.

In addition to Illinois Regulation, the Joint Committee has published a Guide to the Illinois Administrative Procedure Act. The Guide provides a clear section-by-section explanation of the Act to participants and potential participants in the rulemaking process. The Joint Committee's goal is to increase participants' awareness of the process, and, therefore, increase their ability to influence the substance of rules through increased levels of public participation in the rulemaking process.

In addition to the above publications, the Joint Committee has developed an index designed to be a useful research tool. The Joint Committee has compiled the text of every objection and recommendation it has issued since the Committee's inception in 1978 into a set of volumes. Comprehensive indices to the volumes were developed so that objections and recommendations can be located by agency or by Administrative Code citation. The actions were also classified by type so that all objections or recommendations issued on a particular basis (e.g. lack of statutory authority) could be located. The index system has contributed significantly to the ability of the Joint Committee to give precedential value to past objections and recommendations. The 1989 volume of the Index and Text of Objections and Recommendations covering Joint Committee action over the past year will be published in early 1990.

The publications and other materials prepared by the Joint Committee during 1989 demonstrate the Committee's commitment to ensuring that the affected public is aware of State regulatory activities, and that State agencies fully consider the ramifications of such activities prior to implementation.

COURT DECISIONS PERTAINING TO THE
ILLINOIS ADMINISTRATIVE PROCEDURE ACT

Section 7.05 of the Illinois Administrative Procedure Act requires that the Joint Committee study the impact of court rulings and administrative actions on agency rules and rulemaking. In order to carry out this responsibility, the Joint Committee reviews court decisions and Attorney General opinions, and monitors pending litigation which may affect administrative rulemaking. Several noteworthy decisions involving interpretations of the Illinois Administrative Procedure Act were issued recently. The following is a brief summary of those decisions.

In Kaufman Grain Company, Inc. v. Director, Department of Agriculture, 128 Ill. Dec. 654, 534 N.E.2d 1259, the Fourth District Appellate Court of Illinois held that the Department of Agriculture had no statute or rule which allowed it to settle disputes between a grain producer and a grain dealer or a grain warehouse. The Department improperly relied on policy that was not properly promulgated as rules in accordance with the Illinois Administrative Procedure Act and, therefore, was without authority to adjudicate such grain disputes.

The Kaufman case is also significant for the ruling of the court concerning attorney's fees. Section 14.1(b) of the Illinois Administrative Procedure Act provides that in any case in which a party has any administrative rule invalidated by a court for any reason, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. The Appellate Court ruled that Kaufman was entitled to the award of attorney's fees which it reasonably incurred in this litigation, including the fees incurred in the proceedings before the Department. The court stated that Section 14.1(b) of the IAPA gives those subject to regulation an incentive to oppose doubtful rules where compliance would otherwise be less costly than litigation. Therefore, the court awarded fees for the proceedings before the Department, as well as fees incurred in administrative review proceedings, noting that proceedings before an administrative agency are quite often more costly and time consuming than administrative review proceedings.

The Kaufman case illustrates recent trends of the courts to rule unfavorably against agencies that have not promulgated their policies properly under the Illinois Administrative Procedure Act. The court continues to interpret the Illinois Administrative Procedure Act in accordance with Senn Park Nursing Center v. Miller (1984), 104 Ill.2d 169, 83 Ill. Dec. 609, 470 N.E.2d 1029, in which the Illinois Supreme Court ruled a policy of the Department of Public Aid invalid because the policy was not promulgated as a rule. The Kaufman decision specifically cites Senn Park and further strengthens the precedent it established.

In Board of Education of Mundelein Elementary School District No. 75 v. Illinois Educational Labor Relations Board, 128 Ill. Dec. 577, 534 N.E.2d 1022 (Ill. App. 4 Dist. 1989), the Fourth District Appellate Court of Illinois held that the Illinois Educational Labor Relations Board's actions in announcing, by agency opinion, the standards it will apply to reconsideration motions were contrary to the express rulemaking requirements set forth in the Illinois Administrative Procedure Act and, therefore, were void. The court stated

that the "de facto rules" of the Board could not be announced in an agency opinion contrary to the express rulemaking requirements of the Illinois Administrative Procedure Act.

In Harrisonville Telephone Company v. Illinois Commerce Commission, 125 Ill. Dec. 864, 531 N.E.2d 43 (Ill. App. 5 Dist. 1988), the Fifth District Appellate Court held that the Commerce Commission had no authority to order Harrisonville to comply with certain Commission rules "in all future projects which require a certificate...." The court stated that the order as it pertained to future projects was a declaratory ruling and that Section 9(a) of the Illinois Administrative Procedure Act provides "each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings...." Because the Commission has no rule concerning the rendering of declaratory rulings, the court ruled that the Commission had no authority to issue such rulings.

In Itasca Public School District No. 10 v. Sally A. Ward, Director of Employment Security for the State of Illinois, 128 Ill. Dec. 789, 535 N.E.2d 3 (Ill. App. 1 Dist. 1989), the First District Appellate Court held that Employment Security rule amendments that expanded the definition of "good cause" for granting a waiver of penalties should be given retroactive application to the Itasca Public School issue that was pending at the time the amendments became effective. The school district had elected to become a reimbursing employer in 1978 but had never filed a quarterly report as required by law. In 1984, the Department of Employment Security notified the school district that it owed thirty-eight cents for unpaid contributions and \$4,235 in penalties. In 1987 and again in 1988, the Department broadened the definition in its rules of "good cause" to grant a waiver of interest or penalties. The court found that the Director was authorized to do so "at the stage where the rules and regulations are promulgated", and stated further that since the rule amendments did not alter any substantive rights, they could be given retroactive effect in the Itasca case.

In Hansen v. Illinois Racing Board, 128 Ill. Dec. 476, 534 N.E.2d 658 (Ill. App. 1 Dist. 1989), the First District Appellate Court held that a rule of the Illinois Racing Board concerning warrantless searches was unconstitutional on its face. According to the court, the Board's rule failed to properly limit the discretion of the inspecting officers. The rule failed to provide the proper procedure to be followed when an employee refuses to consent to or objects to part of a search, failed to set forth appropriate times for inspections or their frequency, and failed to specify the proper method for choosing who is subject to a search at a given time. In addition, the court awarded attorney fees and costs in accordance with Section 14 of the Illinois Administrative Procedure Act.

In Chemed Corporation, Inc. v. Department of Revenue, 134 Ill. Dec. 313, 542 N.E.2d 492 (Ill. App. 4 Dist. 1989), the Fourth District Appellate Court held that the Department of Revenue's regulations reasonably construed the term "engaged in the business of retail selling" for retailers' occupation tax purposes. In arriving at this opinion, the court quoted from a question and answer that were part of the record of rules review by the Joint Committee on Administrative Rules.

APPENDIX A
HISTORY OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES
AND THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

By the mid-1970's, Illinois had 65 major agencies and nearly 250 smaller boards and commissions. The courts had ruled that administrative rules have the effect of law, and decisions rendered by those bodies conceivably affected the lives of more Illinois citizens than any other in government. Yet, observers of the scene found that organization among these agencies was complex, duplicative and chaotic. Indeed, at the time, no single source could produce a complete organization chart or even a listing of all Illinois agencies, boards and commissions. The goals of good government had been clear for generations. Government is accountable to the people for the effective, efficient and economic delivery of services. Toward this end, the federal government had enacted the federal Administrative Procedure Act in the 1940's, and in September 1975, the Governor signed Public Act 79-1083, effective September 22, 1975, creating the Illinois Administrative Procedure Act.

The Illinois Administrative Procedure Act established four categories of administrative proceedings: rules, contested cases, licenses and rate-making. The Governor's message accompanying the signing of the Act pointed out that this legislation formalized some common procedures, such as public hearings on proposed rules. The message also called the public petition procedures innovative and endorsed the establishment of rulemaking requirements. However, it soon became apparent that the establishment of rulemaking requirements would conflict with Section 2 of the Act which exempted agencies from compliance with any part of the Act except as expressly stated in the law which created or conferred power upon that agency.

In 1977, Section 2 was amended by Public Act 80-1035 (House Bill 14, effective September 27, 1977) to make the Act applicable to every agency, except as otherwise specified by statute. Most agencies now cooperate in the rulemaking process. This has been particularly true since Illinois regulations were codified by the Office of the Secretary of State in January 1985. As a result, rulemaking is now more widely understood by both professionals and the affected public.

Public Act 80-1035 also created the Joint Committee on Administrative Rules in 1977. The function of the Joint Committee under the amended Administrative Procedure Act can be broadly stated as an on-going review and comment function in relation to newly proposed rules, investigation and resolution of complaints arising from rulemaking, and review of new public acts that may require rulemaking. For too long, said the first Chairman of the Joint Committee, Representative Harry Yourell, the legislature had been content to pass legislation without systematically ensuring that agencies charged with the task of implementing that legislation were properly interpreting and complying with the intent of the legislation. In addition to making the Act's rulemaking and hearing provisions applicable to all state agencies and the creation of the

Joint Committee on Administrative Rules, Public Act 80-1035 made several other changes in the Act, including creation of the Illinois Register, a weekly publication of the Secretary of State which informs the public of all rulemaking activity by State agencies.

The minutes of the monthly meetings during the first year show that the Joint Committee dealt with issues commonly facing a new organization, such as staffing and office space, as well as substantive issues about rulemaking and interpretations of the Illinois Administrative Procedure Act. For example, within the first few months, the Joint Committee had reviewed its powers and duties and, based on the separation of powers clause in the 1970 Illinois Constitution, found them to be advisory only. The Joint Committee sent guidelines to all State agencies to assist them in complying with provisions of the Act and prepared an amendment to clarify that all boards of State institutions of higher education were affected by the Act. By the third meeting in January 1978, the Joint Committee was reviewing proposed rules published in the Illinois Register. Objections were issued to several of the rules. At this time, all negotiations between the Joint Committee and a rulemaking agency took place at the monthly meeting, a practice that on occasion resulted in very long meetings.

The question of court-ordered rule changes was first considered by the Joint Committee in February 1978. A court had ordered an amendment to the Illinois Department of Public Aid's rule on physician services for medically necessary abortions for a public aid recipient. Legislation was drafted and presented at the March 23, 1978 meeting to establish a new category of rulemaking for rules required by court order or federal rules and regulations ("peremptory" rulemaking). But it was not until a year and a half later that the Act was amended by Public Act 81-1044 (effective October 1, 1979) to authorize this category of rulemaking.

By March 1978, the Joint Committee had established July 1, 1980, as the deadline for agencies to prepare and submit a compilation of all their rules. In addition, legislation was drafted to require that rules contain specific standards and criteria to permit the affected public to understand the basis on which agency discretion was to be used. This standards and criteria amendment did not become effective until July 1, 1980 (Public Act 81-1129). In March 1978, the Joint Committee also discussed amending the Illinois Administrative Procedure Act to place the burden of proof upon agencies asserting the validity of contested rules in court cases involving rules which have been objected to by the Joint Committee, whenever such agencies have refused to remedy Joint Committee objections. This concept has yet to be enacted.

By the end of its first full year, the Joint Committee had reviewed nearly 500 rulemakings and prepared a legislative package that contained 23 recommended bills. In its second year of operation, 1979, the Joint Committee examined over 525 rulemakings, issued 65 statements of objection and implemented the five-year rules review program. Agency rulemaking increased in 1980 during which time the Joint Committee reviewed nearly 700 proposed, emergency and peremptory rulemakings and completed 9 detailed reviews of 28 sets of existing rules. Agency rulemaking has generally continued to increase during the years that the Joint Committee has compiled data. The tables show a comparison of general, emergency, and peremptory rulemaking from 1980 (1982

for emergency and peremptory) through 1989 and illustrate the rulemaking activity of State agencies during that time.

The Illinois Administrative Procedure Act has been continually evolving since 1977. In addition to the creation of the Joint Committee on Administrative Rules as an oversight body, which became a Legislative Support Services Agency in 1984, the Act has been amended to deal with numerous problems which have arisen. One of the most significant has been the implementation of the small business and small municipality flexibility requirements imposed pursuant to Sections 3.10, 4.03, 5.01, and 7.06 of the Act. These Sections require agencies to consider the impact of rules upon small businesses and small municipalities and, if feasible, suggest alternatives to those rules. Several other legislative changes have been made in the Act to remedy specific problems. Public Act 84-469, effective January 1, 1986, provides that pay rates established pursuant to the Personnel Code can be amended using the peremptory rulemaking process within 30 days after such amendment is necessary due to a conflict between the rates and the terms of a collective bargaining agreement. Public Act 84-576, also effective January 1, 1986, prohibits agencies from using the peremptory rulemaking process to implement consent orders or other negotiated settlements. The Act also provides that emergency rulemaking may be used in these instances. Public Act 84-1329, effective September 9, 1986, permits the second notice period to be extended upon the mutual agreement of the Joint Committee and the agency. Two new sections have been added to the Act. Section 5.04, effective January 1, 1985, provides that, under certain conditions, a rule can be automatically repealed, and Section 5a, effective July 1, 1986, provides for the publication of a regulatory agenda.

Several amendments to the Illinois Administrative Procedure Act were passed during the 85th General Assembly. Public Act 85-317 and Public Act 85-367 are identical. These acts amend the Illinois Administrative Procedure Act to permit a state agency to issue declaratory rulings concerning whether compliance with a federal rule will satisfy the purposes and provisions of the state agency's similar, applicable rule. Public Act 85-340 allows the Department of Revenue to incorporate federal rules or regulations by reference without identifying the incorporated matter by date and without including a statement that the incorporation does not include later amendments, in circumstances where the Department is promulgating rules imposing taxes on or measured by income. Public Act 85-451 extends the exemption from the limitation on the number of emergency rules which may be adopted in a 24-month period to include emergency rules that make additions to and deletions from the generic drug formulary pursuant to Section 3.14 of the Illinois Food, Drug and Cosmetic Act. Public Act 85-587 amends the definition of "small business" to include a corporation organized under the General Not for Profit Corporation Act of 1986. Public Act 85-1048, which amends Section 6.01 of the Illinois Administrative Procedure Act, provides that the Secretary of State shall accept for publication in the Illinois Register all Pollution Control Board documents, including Board opinions, which the Board deems appropriate for publication.

Two changes in the Illinois Administrative Procedure Act have become law during the first year of the 86th General Assembly. Public Act 86-599, effective September 1, 1989, provides that an agency that incorporates materials into its rules by reference need not make the incorporated materials

available for copying if in so doing the agency would infringe upon another entity's copyright. The current statutory provision specifying that incorporated material must be available to the public from the source of the material remains unchanged. This law was passed to remove a possible conflict for agencies whereby their compliance with the Illinois Administrative Procedure Act would result in violation of copyright laws. Public Act 86-203, effective August 14, 1989, amends the applicability clause of the Illinois Administrative Procedure Act (IAPA) to clarify the Pollution Control Board's exemptions from the rulemaking procedures of the IAPA. These exemptions currently appear in the Environmental Protection Act, and have been set forth in the IAPA to clarify the applicability of the IAPA to the rulemaking procedures of the Pollution Control Board. Thus, the Act will continue to evolve as problems concerning administrative rulemaking arise.

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1980 THROUGH 1989

| AGENCY | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|---|------|------|------|------|------|------|------|------|------|------|
| Abandoned Mined Lands Reclamation Council | - | 1 | - | - | 2 | - | 2 | - | - | - |
| Administrative Rules, Joint Committee on | 1 | 1 | 1 | - | - | - | 3 | 5 | - | - |
| Administrative Services, Department of (1) | 7 | 7 | 1 | - | - | - | - | - | - | - |
| Aggregate Mining Problems Study Commission | - | 1 | - | - | - | - | - | - | - | - |
| Aging, Department on | 6 | 6 | 4 | 4 | 6 | 3 | 2 | 1 | 3 | 4 |
| Agriculture, Department of | 14 | 16 | 24 | 18 | 41 | 15 | 11 | 26 | 21 | 16 |
| Alcoholism and Substance Abuse, Department of (2) | - | - | 3 | 2 | 2 | 5 | 6 | 3 | 6 | - |
| Attorney General | 2 | - | 4 | 1 | 3 | 2 | - | 2 | 3 | - |
| Auditor General | 2 | 1 | 4 | 1 | 3 | 1 | - | - | - | 1 |
| Banking Board of Illinois, State | - | - | - | - | - | - | - | - | 2 | - |
| Banks and Trust Companies, Commissioner of | 3 | - | 6 | - | - | - | 6 | 3 | 6 | 3 |
| Capital Development Board | 3 | - | 3 | - | 2 | 9 | 4 | 6 | 3 | 2 |
| Carnival-Amusement Safety Board | - | - | - | - | - | - | 2 | 3 | - | 2 |
| Central Management Services, Department of (1) | - | - | 3 | 16 | 18 | 10 | 14 | 11 | 11 | 11 |
| Children and Family Services, Department of | 60 | 1 | 26 | 10 | 23 | 14 | 22 | 3 | 9 | 5 |
| Cities and Village Municipal Problems Commission | - | 1 | - | - | - | - | - | - | - | - |
| Civil Service Commission | - | 2 | - | - | 2 | - | - | - | - | - |
| Civil Service Merit Board, University | - | 3 | - | 1 | - | - | - | - | - | - |
| Civil Service System, State Universities | - | - | - | - | 2 | 1 | 1 | 1 | 2 | 1 |
| Commerce and Community Affairs, Department of | - | 1 | 8 | 4 | 20 | 29 | 29 | 18 | 17 | 17 |
| Commerce Commission, Illinois | - | 10 | 21 | 19 | 43 | 22 | 20 | 86 | 24 | 26 |
| Commission Review Board | - | - | - | - | - | - | 1 | - | - | - |
| Community College Board, Illinois | 19 | - | 1 | 2 | 3 | 2 | 2 | 2 | 5 | 5 |
| Comptroller | 4 | 3 | 4 | 4 | 3 | 1 | 5 | 3 | 4 | 2 |
| Condominium Study Commission, Joint | - | 1 | - | - | - | - | - | - | - | - |
| Conservation, Department of | 75 | 108 | 33 | 34 | 36 | 34 | 33 | 27 | 24 | 35 |
| Cook County Local Records Commission | - | - | - | - | - | - | 1 | - | - | 1 |
| Corrections, Department of | 38 | 24 | 15 | 66 | - | 1 | 10 | 8 | 5 | 8 |
| County Problems Commission | - | 1 | - | - | - | - | - | - | - | - |
| Court of Claims | - | - | - | - | 1 | - | - | - | - | - |
| Criminal Justice Information Authority, Illinois | - | - | - | - | - | 1 | 1 | 2 | - | 1 |
| Dangerous Drugs Advisory Council | - | 2 | - | - | - | - | - | - | - | - |

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1980 THROUGH 1989

| AGENCY | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|--|------|------|------|------|------|------|------|------|------|------|
| Dangerous Drugs Commission (2) | - | 2 | 3 | 3 | 2 | - | - | - | - | - |
| Development Finance Authority, Illinois | - | - | - | - | - | - | 4 | 1 | - | - |
| East St. Louis, Board of Trustees of the State Community College of | - | - | 2 | 1 | - | 1 | - | - | - | - |
| Educational Facilities Authority, Illinois | 9 | 8 | 3 | 7 | 5 | 12 | 30 | 12 | 9 | 10 |
| Educational Labor Relations Board, Illinois | 1 | - | 2 | 1 | 1 | - | 2 | 1 | - | 1 |
| Educational Opportunity, Illinois Consortium For | - | - | - | - | 4 | 3 | - | - | 2 | 5 |
| Elections, State Board of | - | - | - | - | - | - | 1 | - | - | - |
| Emergency Services and Disaster Agency | 8 | 3 | 7 | 3 | 4 | 1 | - | 3 | - | 7 |
| Employment Security, Department of (3) | - | 2 | 9 | 7 | - | - | 3 | 2 | 2 | - |
| Energy and Natural Resources, Department of | - | - | - | - | 3 | 13 | 10 | 5 | 19 | 16 |
| Energy Resource Commission | - | - | 2 | 1 | - | 3 | - | 2 | - | 1 |
| Environmental Protection Agency | 10 | 16 | 18 | 20 | 21 | 10 | 8 | 14 | 16 | 8 |
| Ethics, Board of | - | - | - | - | - | - | - | - | 1 | - |
| Experimental Organ Transplantation Procedures Board | - | - | - | - | - | 1 | 1 | - | 1 | 1 |
| Export Development Authority, Illinois | - | - | - | - | - | 1 | 1 | 1 | 1 | - |
| Fair Employment Practices Commission | - | - | - | - | - | - | - | - | - | - |
| Farm Development Authority, Illinois | - | - | 1 | 1 | 2 | 1 | 2 | 3 | 2 | - |
| Financial Institutions, Department of | 8 | 3 | - | 3 | 9 | 4 | 2 | 3 | 4 | 1 |
| Fire Marshal, Office of the State Governors of State Colleges and Universities, Board of | 1 | 1 | 7 | 3 | 5 | 3 | 3 | 5 | 1 | 4 |
| Governor's Purchased Care Review Board | - | - | - | - | - | - | - | - | 1 | 1 |
| Guardianship and Advocacy Commission | 2 | 1 | - | 1 | 1 | 1 | - | 1 | - | - |
| Health Care Cost Containment Council, Illinois | 2 | 1 | 2 | 2 | 1 | 3 | - | - | - | - |
| Health Care Cost Containment Council, Statewide | - | - | - | - | - | 10 | 1 | 3 | 2 | 1 |
| Health Coordinating Council, Illinois | - | 2 | - | - | - | - | - | - | - | - |
| Health Facilities Authority, Illinois | - | 1 | - | - | - | - | - | - | - | - |
| Health Facilities Planning Board | - | - | - | - | 2 | 1 | - | 3 | 3 | 7 |
| Health Finance Authority | 5 | 1 | 1 | - | - | - | 9 | - | - | - |

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1980 THROUGH 1989

| AGENCY | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|--|------|------|------|------|------|------|------|------|------|------|
| Hearing Aid Consumer Protection Board | - | - | - | - | - | - | - | 1 | - | 1 |
| Higher Education, Board of | 2 | 5 | - | - | 20 | 5 | 3 | - | 1 | 6 |
| Higher Education Loan Authority, Illinois Independent | - | - | - | 2 | 1 | 1 | 2 | 1 | - | - |
| Housing Development Authority, Illinois | 1 | - | - | 3 | 3 | 5 | 1 | 1 | 1 | 1 |
| Human Rights Commission | - | 1 | 1 | 2 | 2 | - | 1 | - | - | - |
| Human Rights, Department of | - | 5 | 4 | 3 | 1 | - | 1 | - | - | - |
| Industrial Commission, Illinois | 3 | 2 | 3 | 1 | 2 | 7 | 2 | - | - | - |
| Insurance, Department of | 17 | 13 | 13 | 4 | 25 | 9 | 11 | 9 | 12 | 13 |
| Investments, Illinois State Board of | 1 | - | 1 | 2 | - | - | - | - | - | 1 |
| Labor, Department of (3) | 3 | 7 | 8 | 8 | 5 | 3 | 3 | 1 | 2 | 1 |
| Labor Relations Board, Illinois Local | - | - | - | - | 4 | 1 | 8 | - | 4 | - |
| Labor Relations Board, Illinois State | - | - | - | - | 4 | 1 | 8 | - | 4 | - |
| Law Enforcement Commission | - | 2 | - | - | - | - | - | - | - | - |
| Law Enforcement Merit Board, Department of | 1 | - | 1 | 1 | 4 | 1 | - | - | - | - |
| Legislative Information System | 2 | - | 2 | 1 | - | - | - | - | - | - |
| Liquor Control Commission, Illinois | - | - | - | 1 | - | - | - | - | 1 | - |
| Local Government Affairs, Department of | 3 | - | - | - | - | - | - | - | - | - |
| Local Government Records Commission | - | - | - | - | - | - | - | - | - | - |
| Local Governmental Law Enforcement Officers Training Board, Illinois | - | - | - | - | - | - | - | - | - | - |
| Lottery, Department of (5) | - | - | - | 4 | 1 | - | 2 | 1 | - | 2 |
| Medical Center Commission | - | - | - | - | - | - | 2 | - | 2 | - |
| Mental Health and Developmental Disabilities, Department of | - | - | - | - | - | - | - | - | - | - |
| Military Affairs, Department of (7) | 4 | 8 | 3 | 3 | 5 | 8 | 2 | 3 | 3 | 3 |
| Military and Naval Department (7) | - | - | - | - | - | - | - | - | 2 | - |
| Mines and Minerals, Department of | - | - | - | - | - | 1 | - | - | - | - |
| Mississippi River Parkway Commission | 5 | 5 | 6 | 6 | 4 | 7 | 49 | 7 | - | 22 |
| Natural Resources, Institute of | - | 1 | - | - | - | - | - | - | - | - |
| Nature Preserves Commission | 1 | 2 | - | - | - | - | - | - | - | - |
| Nuclear Safety, Department of | 1 | 2 | - | 1 | - | - | - | - | - | - |
| Nutrition, State Council or | - | 1 | 3 | 3 | 4 | 3 | 19 | 7 | 7 | 8 |
| Personnel, Department of (1) | 9 | 9 | 9 | - | - | - | - | - | - | - |

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1980 THROUGH 1989

| AGENCY | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|---|------|------|------|------|------|------|------|------|------|------|
| Pollution Control Board | 18 | 13 | 18 | 23 | 21 | 32 | 43 | 53 | 73 | 71 |
| Prairie State 2000 Authority | - | - | - | - | - | - | 2 | - | - | - |
| Prisoner Review Board | - | - | 1 | - | - | 1 | - | - | 2 | - |
| Professional Regulation, Department of (6) | - | - | - | - | - | - | - | - | 14 | 15 |
| Property Tax Appeal Board (4) | - | - | - | - | - | 1 | - | - | - | 1 |
| Public Aid, Department of | 47 | 66 | 40 | 86 | 67 | 94 | 82 | 87 | 107 | 67 |
| Public Health, Department of | 55 | 44 | 92 | 91 | 53 | 25 | 44 | 27 | 50 | 45 |
| Racing Board, Illinois | 19 | 10 | 22 | 9 | 7 | 13 | 14 | 9 | 11 | 5 |
| Records Commission, State | - | - | - | - | - | - | - | - | - | 1 |
| Regents, Board of | - | 2 | - | - | - | - | - | - | - | 2 |
| Registration and Education, Department of (6) | 22 | 15 | 16 | 15 | 26 | 17 | 10 | 14 | - | - |
| Rehabilitation Services, Department of | 3 | 1 | 6 | 23 | 28 | 13 | 57 | 45 | 25 | 27 |
| Retirement System of Illinois, State Employees' | 5 | 3 | 4 | 1 | 2 | 3 | - | - | 1 | - |
| Retirement System of The State of Illinois, Teachers' | - | - | - | - | - | 2 | - | - | 1 | - |
| Retirement System, State Universities | - | - | - | 1 | - | - | - | - | - | 1 |
| Revenue, Department of (4)(5) | 24 | 45 | 14 | 11 | 9 | 7 | 24 | 19 | 20 | 24 |
| Savings and Loan Associations, Commissioner of | 1 | 7 | 1 | 1 | 1 | 2 | 1 | 3 | 4 | 2 |
| Scholarship Commission, Illinois State (8) | - | 11 | 4 | 2 | 1 | 14 | 10 | 13 | 5 | - |
| Secretary of State | 12 | 26 | 14 | 31 | 20 | 19 | 8 | 18 | 30 | 31 |
| Select Joint Committee on Regulatory Agency Reform | - | 2 | - | - | - | - | - | - | - | - |
| Sports Facilities Authority, Illinois | - | - | - | - | - | - | - | - | 2 | - |
| State Fair Agency | - | - | - | - | - | - | - | - | - | - |
| State Mandates Board of Appeals | - | - | 1 | - | - | - | - | - | - | - |
| State Police, Department of | 1 | - | 1 | 2 | 2 | 1 | 2 | 1 | 4 | - |
| State Police Merit Board, Department of | - | - | - | - | - | - | 2 | 2 | 2 | 2 |
| Student Assistance Commission, Illinois (8) | - | - | - | - | - | - | - | - | - | 9 |
| Transportation, Department of | 13 | 17 | 5 | 5 | 10 | 16 | 23 | 16 | 25 | 18 |
| Travel Control Board, Higher Education | 1 | 1 | 2 | - | - | 1 | - | - | - | - |
| Travel Control Board, Legislative | - | 1 | - | - | - | - | - | - | - | - |
| Travel Regulation Council | - | - | - | - | - | - | - | - | 1 | - |
| Treasurer | - | - | - | 1 | 1 | - | - | - | - | 4 |

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1980 THROUGH 1989

| AGENCY | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|---|------|------|------|------|------|------|------|------|------|------|
| Trustees of Southern Illinois University, Board of | - | - | - | - | - | - | - | - | - | 1 |
| Trustees of the University of Illinois, Board of | - | 1 | - | 1 | 1 | 1 | 1 | - | 2 | 2 |
| Veterans' Affairs, Department of | 2 | 2 | - | 1 | 1 | - | 5 | 7 | - | - |
| Visit and Examine State Institutions, Commission to | - | 1 | - | - | - | - | - | - | - | - |
| TOTAL | 556 | 563 | 510 | 583 | 605 | 532 | 696 | 614 | 627 | 589 |

- (1) The Department of Personnel and the Department of Administrative Services were combined in 1982, and the name was changed to the Department of Central Management Services.
- (2) The Department of Alcoholism and Substance Abuse, once a division of the Dangerous Drugs Commission, became a separate agency in 1984.
- (3) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.
- (4) The Property Tax Appeal Board, once a division of the Department of Revenue, became a separate agency in 1985.
- (5) The Department of the Lottery, once a division of the Department of Revenue (Lottery Control Board), became a separate agency in 1986.
- (6) The Department of Registration and Education became the Department of Professional Regulation in 1988.
- (7) The Military and Naval Department became the Department of Military Affairs in 1988.
- (8) The Illinois State Scholarship Commission became the Illinois Student Assistance Commission in 1989.

TABLE 13
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1982 THROUGH 1989

| AGENCY | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|--|------|------|------|------|------|------|------|------|
| Abandoned Mined Lands Reclamation Council | - | - | - | - | 2 | - | - | - |
| Aging, Department on | 1 | - | - | - | - | - | - | 1 |
| Agriculture, Department of | - | - | 1 | 2 | 1 | 1 | 2 | 1 |
| Alcoholism and Substance Abuse, Department of (1) | - | - | 1 | 1 | 2 | 1 | 1 | - |
| Attorney General | - | - | - | 1 | - | - | - | - |
| Banks and Trust Companies, Commissioner of | 1 | - | - | - | 2 | - | - | - |
| Capital Development Board | - | - | - | 1 | - | - | - | - |
| Carnival-Amusement Safety Board | - | - | - | - | 1 | - | - | 1 |
| Central Management Services, Department of (2) | 2 | 3 | 13 | 6 | 6 | 4 | 8 | 3 |
| Children and Family Services, Department of | 4 | 1 | - | - | 1 | 1 | - | - |
| Citizens Council on Children | - | - | - | - | - | 1 | - | - |
| Commerce and Community Affairs, Department of | - | - | - | 6 | 5 | 2 | 1 | 8 |
| Commerce Commission, Illinois | 2 | 5 | 3 | 1 | 5 | 3 | 4 | 2 |
| Commission Review Board | - | - | - | - | 1 | - | - | - |
| Community College Board, Illinois | - | 1 | 2 | - | - | - | - | - |
| Comptroller | - | - | - | - | - | - | - | - |
| Conservation, Department of | 3 | 4 | 1 | 7 | 2 | 1 | 7 | 6 |
| Corrections, Department of | 15 | - | - | - | - | - | - | - |
| Criminal Justice Information Authority, Illinois | - | - | - | 1 | - | 1 | - | 1 |
| Dangerous Drugs Commission | - | - | - | - | - | - | - | - |
| Development Finance Authority, Illinois | - | - | - | - | 2 | - | - | - |
| Education, State Board of | - | 3 | - | 9 | 5 | 2 | - | 2 |
| Educational Labor Relations Board, Illinois | - | - | 4 | 1 | - | - | 1 | 1 |
| Educational Opportunity, Illinois Consortium For | - | - | - | - | 1 | - | - | - |
| Elections, State Board of | 2 | 1 | 2 | - | - | - | - | - |
| Emergency Services and Disaster Agency | 1 | - | - | - | - | 1 | - | - |
| Employment Security, Department of (3) | - | - | 3 | - | - | - | 4 | 5 |
| Environmental Protection Agency | - | - | 2 | 2 | 2 | 3 | - | 1 |
| Experimental Organ Transplantation Procedures Board | - | - | - | 1 | - | - | - | - |
| Export Development Authority, Illinois | - | - | - | - | 1 | - | - | - |

TABLE 13
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1982 THROUGH 1989

| AGENCY | <u>1982</u> | <u>1983</u> | <u>1984</u> | <u>1985</u> | <u>1986</u> | <u>1987</u> | <u>1988</u> | <u>1989</u> |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Farm Development Authority, Illinois | 1 | 1 | 1 | 2 | 3 | - | - | - |
| Financial Institutions, Department of | - | - | - | 1 | 1 | 1 | - | - |
| Fire Marshal, Office of the State | 2 | 1 | 2 | - | 2 | - | - | 3 |
| Governor's Purchased Care Review Board | - | - | - | - | - | - | - | - |
| Health Coordinating Council, Statewide | - | - | - | - | - | - | - | - |
| Higher Education, Board of | - | - | 1 | - | - | - | - | 1 |
| Higher Education Loan Authority, Illinois Independent | - | 1 | - | - | - | - | - | - |
| Housing Development Authority, Illinois | - | 1 | 1 | 1 | - | 1 | - | - |
| Human Rights, Department of | - | - | - | - | - | - | - | - |
| Industrial Commission, Illinois | 2 | - | 2 | 2 | 2 | - | - | - |
| Insurance, Department of | 2 | 3 | - | 1 | 5 | - | - | 1 |
| Investments, State Board of | - | - | - | - | - | - | - | 1 |
| Labor, Department of (3) | - | 3 | 3 | 2 | - | - | - | - |
| Labor Relations Board, Illinois Local | - | - | 4 | - | - | - | - | - |
| Labor Relations Board, Illinois State | - | - | 4 | - | - | - | - | - |
| Law Enforcement Merit Board, Department of | - | - | 2 | - | - | - | - | - |
| Legislative Information System | 1 | 1 | - | - | - | - | - | - |
| Local Governmental Law Enforcement Officers | - | 1 | - | - | 1 | - | - | - |
| Training Board, Illinois | - | - | - | - | 2 | - | - | - |
| Lottery, Department of | - | - | - | - | - | - | - | - |
| Mental Health and Developmental Disabilities, | - | - | - | - | - | - | - | - |
| Department of | 2 | 1 | - | - | - | - | - | - |
| Mines and Minerals, Department of | 3 | 1 | - | - | - | - | - | - |
| Nuclear Safety, Department of | 1 | - | 2 | 1 | 1 | 1 | - | - |
| Personnel, Department of (2) | 3 | - | - | - | - | - | - | - |
| Pollution Control Board | 1 | 1 | 3 | 3 | 2 | - | 1 | - |
| Prairie State 2000 Authority | - | - | - | - | 2 | - | - | - |
| Professional Regulation, Department of (4) | - | - | - | - | - | - | 2 | 6 |
| Public Aid, Department of | 4 | 2 | 6 | 6 | 9 | 18 | 17 | 15 |
| Public Health, Department of | 15 | 2 | 2 | 2 | 3 | 1 | 18 | 3 |
| Racing Board, Illinois | 2 | 2 | 1 | 2 | - | - | 1 | 1 |
| Regents, Board of | - | - | - | - | - | - | - | - |
| Registration and Education, Department of (4) | 5 | 5 | 6 | 1 | 1 | 3 | - | - |

TABLE 13
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1982 THROUGH 1989

| AGENCY | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|--|------|------|------|------|------|------|------|------|
| Rehabilitation Services, Department of | 1 | - | - | - | 3 | - | - | 4 |
| Retirement System of Illinois, State Employees' | 1 | - | 1 | 1 | - | - | - | - |
| Revenue, Department of | 3 | - | 1 | - | 2 | - | 4 | 2 |
| Savings and Loan Associations, Commissioner of | - | - | - | 1 | 1 | 1 | 4 | - |
| Scholarship Commission, Illinois State (5) | 2 | 1 | - | - | 2 | 2 | 1 | - |
| Secretary of State | 1 | 3 | 3 | 6 | 2 | - | - | 1 |
| Sports Facilities Authority, Illinois | - | - | - | - | - | - | 2 | - |
| State Mandates Board of Appeals | 1 | - | - | 1 | - | - | - | - |
| State Police, Department of | - | - | - | - | - | - | - | - |
| State Police Merit Board, | - | - | - | - | 1 | - | - | - |
| Department of | - | - | - | - | - | - | - | - |
| Transportation, Department of | - | - | 1 | 1 | 1 | 2 | - | 1 |
| Travel Regulation Council | - | - | - | - | 1 | - | - | - |
| Treasurer | - | - | - | 1 | - | - | - | - |
| Trustees of the University of Illinois, Board of | - | 1 | - | - | - | - | - | - |
| Veterans' Affairs, Department of | - | - | - | - | 1 | - | - | - |
| TOTAL | 84 | 49 | 78 | 74 | 87 | 51 | 78 | 71 |

- (1) The Department of Alcoholism and Substance Abuse, once a division of the Dangerous Drug Commission, became a separate agency in 1984.
- (2) The Department of Personnel and the Department of Administrative Services were combined in 1982, and the name was changed to the Department of Central Management Services.
- (3) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.
- (4) The Department of Registration and Education became the Department of Professional Regulation in 1988.
- (5) The Illinois State Scholarship Commission became the Illinois Student Assistance Commission in 1989.

TABLE 14
COMPARISON OF PEREMPTORY RULEMAKING BY AGENCY
1982 THROUGH 1989

| AGENCY | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|---|------|------|------|------|------|------|------|------|
| Aging, Department on | - | - | - | - | - | - | - | - |
| Agriculture, Department of | - | - | - | 9 | 10 | 9 | 7 | 5 |
| Central Management Services, Department of | - | - | - | - | 6 | 7 | 7 | 3 |
| Children and Family Services, Department of | - | - | 1 | - | - | - | - | - |
| Commerce Commission, Illinois | 1 | - | - | - | - | - | 2 | - |
| Comptroller | 1 | - | - | - | - | - | - | - |
| Conservation, Department of | - | - | - | 2 | - | - | - | - |
| Corrections, Department of | 3 | 1 | - | - | - | - | - | - |
| Education, State Board of | - | 1 | - | - | - | - | - | - |
| Employment Security, Department of (1) | - | - | - | 1 | - | - | - | - |
| Labor, Department of (1) | - | - | - | - | - | - | - | - |
| Nature Preserves Commission | 1 | - | - | - | - | - | - | - |
| Pollution Control Board | 7 | 10 | 11 | 9 | 14 | 10 | - | - |
| Public Aid, Department of | 6 | 3 | 9 | 2 | 3 | 4 | 2 | 1 |
| Public Health, Department of | 1 | - | 1 | - | - | - | - | - |
| Rehabilitation Services, Department of | - | - | - | - | - | 1 | 1 | - |
| Retirement System of Illinois, State Employees' | - | 1 | - | - | - | 1 | - | - |
| Revenue, Department of | - | - | - | - | - | 1 | - | - |
| Travel Regulation Council | - | - | - | - | - | 1 | - | - |
| Transportation, Department of | - | - | - | - | - | - | - | 1 |
| TOTAL | 20 | 16 | 22 | 23 | 33 | 33 | 19 | 10 |

(1) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.

January 1, 1990

APPENDIX B
THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(Codified by West Publishing Company in Illinois Revised Statutes
at chapter 127, paragraphs 1001-1021.)

AN ACT in relation to administrative rules and procedures, and to amend an Act therein named and in connection therewith. (PA 79-1083, approved and effective September 22, 1975)

Section 1. SHORT TITLE. This Act shall be known and may be cited as "The Illinois Administrative Procedure Act." (PA 79-1083)

Section 2. APPLICABILITY. (a) This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

(b) The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) legal opinions issued under Section 2-3.7 of The School Code, (3) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, admissions standards and procedures, and (4) the class specifications for positions and individual position descriptions prepared and maintained pursuant to the "Personnel Code"; however such specifications shall be made reasonably available to the public for inspection and copying. Neither shall the provisions of this Act apply to hearings under Section 20 of the "Uniform Disposition of Unclaimed Property Act."

(c) Section 5 of this Act relating to procedures for rulemaking shall not apply to:

(1) rules adopted by the Pollution Control Board which, in accordance with Section 7.2 of the Environmental Protection Act, are identical in substance to federal regulations, or amendments thereto, implementing the following: Sections 3001, 3002, 3003, 3004, 3005 and 9003 of the Solid Waste Disposal Act; Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; Sections 307(b), 307(c), 307(d), 402(b)(8) and 402(b)(9) of the Federal Water Pollution Control Act; and Sections 1412(b), 1414(c), 1417(a), 1421 and 1445(a) of the Safe Drinking Water Act;

(2) rules adopted by the Pollution Control Board which establish or amend standards for the emission of hydrocarbons and carbon monoxide from

gasoline powered motor vehicles subject to inspection under the Vehicle Emissions Inspection Law;

(3) procedural rules adopted by the Pollution Control Board governing requests for exceptions under Section 14.2 of the Environmental Protection Act;

(4) the granting by the Pollution Control Board, pursuant to an adjudicatory determination, of an adjusted standard for persons who can justify such an adjustment consistent with subsection (a) of Section 27 of the Environmental Protection Act; and

(5) rules adopted by the Pollution Control Board which are identical in substance to the regulations adopted by the Office of the State Fire Marshal under clause (ii) of paragraph (b) of subsection (3) of Section 2 of "An Act to regulate the storage, transportation, sale and use of gasoline and volatile oils", approved June 28, 1919, as amended.

(d) Pay rates established pursuant to Section 8a of the Personnel Code shall be amended or repealed pursuant to the process set forth in Section 5.03 within 30 days after it becomes necessary to do so due to a conflict between the rates and the terms of a collective bargaining agreement covering the compensation of an employee subject to that Code. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1514, effective January 1, 1981; Amended by PA 83-0891, effective November 2, 1983; Amended by PA 84-469, effective January 1, 1986)

Section 3. DEFINITIONS. As used in this Act, unless the context otherwise requires, the terms specified in Section 3.01 through 3.12 have the meanings ascribed to them in those Sections. (PA 79-1083; Amended by PA 82-0783, effective July 13, 1982; Amended by PA 84-1452, effective January 5, 1987; Amended by PA 85-293, effective September 8, 1987)

Section 3.01. AGENCY. "Agency" means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, "agency" does not include:

- (a) the House of Representatives and Senate, and their respective standing and service committees;
- (b) the Governor; and
- (c) the justices and judges of the Supreme and Appellate Courts.

No entity shall be considered an "agency" for the purposes of this Act unless authorized by law to make rules or to determine contested cases. (PA 79-1083; Amended by PA 80-1457, effective January 1, 1979)

Section 3.02. CONTESTED CASE. "Contested case" means an adjudicatory proceeding, not including ratemaking, rulemaking, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for hearing. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.03. HEARING EXAMINER. "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof. (PA 79-1083)

Section 3.04. LICENSE. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. (PA 79-1083)

Section 3.05. LICENSING. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. (PA 79-1083)

Section 3.06. PARTY. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (PA 79-1083)

Section 3.07. PERSON. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency. (PA 79-1083)

Section 3.08. RATE-MAKING OR RATE-MAKING ACTIVITIES. "Rate-making" or "Rate-making activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm or corporation operating or transacting any business in this State. (PA 79-1083)

Section 3.09. RULE. "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.10. SMALL BUSINESS. For the purpose of this Act, "small business" means a corporation organized under the "General Not For Profit Corporation Act of 1986", as amended, or a concern, including its affiliates, which is independently owned and operated, not dominant in its field and which employs fewer than 50 full-time employees or which has gross annual sales of less than \$4 million. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations. (Added by PA 82-492, effective January 1, 1982; Amended by PA 85-587, effective January 1, 1988)

Section 3.11. MUNICIPALITY. "Municipality" has the meaning ascribed to it in Section 1-1-2 of the Illinois Municipal Code. (Added by PA 84-1452, effective January 5, 1987)

Section 3.12. SMALL MUNICIPALITY. "Small municipality" means any municipality of 5,000 or fewer inhabitants and any municipality of more than 5,000 inhabitants which employs fewer than 50 persons full-time. For purposes of a specific rule, an agency may define small municipality to include employment of more than 50 persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small municipalities. (Added by PA 84-1452, effective January 5, 1987)

Section 4. ADOPTION OF RULES; PUBLIC INFORMATION, AVAILABILITY OF RULES. (a) In addition to other rulemaking requirements imposed by law, each agency shall:

1. adopt rules of practice setting forth the nature and requirements of all formal hearings;

2. make available for public inspection all rules adopted by the agency in the discharge of its functions.

(b) Each agency shall make available for public inspection all final orders, decisions and opinions, except those deemed confidential by state or federal statute and any trade secrets.

(c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. However, no Agency shall assert the invalidity of a rule which it has adopted pursuant to this Act when an opposing party has relied upon such rule.

(d) Rulemaking which creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the time that the first notice under Section 5.01 is published or when the rule is published under Section 5.02 or 5.03. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1562, effective January 16, 1981; Amended by P.A. 83-1387, effective January 1, 1985; Amended by P.A. 83-1453, effective January 1, 1985)

Section 4.01 REQUIRED RULES. (a) Each agency shall maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;

2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;

3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and

4. a current description of the agency's rulemaking procedures with necessary flow charts depicting same.

(b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section in lieu of any other provisions or requirements of this Act.

The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State as provided by paragraphs (a) and (b) of Section 6, and may become effective immediately. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 4.02. RULES IMPLEMENTING DISCRETIONARY POWERS -- STANDARDS. Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. (Added by PA 81-1129, effective July 1, 1980)

Section 4.03. SMALL BUSINESS AND SMALL MUNICIPALITY FLEXIBILITY. When an agency proposes a new rule, or an amendment to an existing rule, which may have an impact on small businesses or small municipalities, the agency shall do each of the following: (a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses or small municipalities. The agency shall reduce the impact by utilizing one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rulemaking.

(1) Establish less stringent compliance or reporting requirements in the rule for small businesses or small municipalities.

(2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses or small municipalities.

(3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses or small municipalities.

(4) Establish performance standards to replace design or operational standards in the rule for small businesses or small municipalities.

(5) Exempt small businesses or small municipalities from any or all requirements of the rule.

(b) Prior to or during the notice period required under Section 5.01(a) of this Act, the agency shall provide an opportunity for small businesses or small municipalities to participate in the rulemaking process. The Agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.

(1) The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses or small municipalities.

(2) The publication of a notice of rulemaking in publications likely to be obtained by small businesses or small municipalities.

(3) The direct notification of interested small businesses or small municipalities.

(4) The conduct of public hearings concerning the impact of the rule on small businesses or small municipalities.

(5) The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses or small municipalities.

(c) Prior to the notice period required under Section 5.01(a) of this Act, the agency shall notify the Business Assistance Office of the Department of Commerce and Community Affairs when rules affect businesses. The Business Assistance Office shall prepare an impact analysis of the rule describing its effect on small businesses. The impact analysis shall be completed within the notice period as described in subsection (a) of Section 5.01. Upon completion of the analysis, the Business Assistance Office shall submit this analysis to both the Joint Committee on Administrative Rules and to the agency proposing the rule. The impact analysis shall contain the following:

1. A summary of the projected reporting, recordkeeping and other compliance requirements of the proposed rule.
2. A description of the types and an estimate of the number of small businesses to which the proposed rule will apply.
3. An estimate of the economic impact which the regulation will have on the various types of small businesses affected by the rulemaking.
4. A description of or a listing of alternatives to the proposed rule which would minimize the economic impact of the rule. Such alternative must be consistent with the stated objectives of the applicable statutes and regulations.

(Added by PA 82-492, effective January 1, 1982; Amended by PA 83-1341, effective September 7, 1984; Amended by PA 84-1452, effective January 5, 1987)

Section 5. PROCEDURE FOR RULEMAKING. (a) Prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Sections 5.01, 5.02 or 5.03, whichever is applicable.

(b) No action by any agency to adopt, amend or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

(c) The notice and publication requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 5a. REGULATORY AGENDA. An agency may submit for publication in the Illinois Register a regulatory agenda to elicit public comments concerning any rule which the agency is considering proposing but for which no notice or proposed rulemaking activity has been submitted to the Illinois Register. A regulatory agenda shall consist of summaries of such

rules. Each summary shall, in less than 2,000 words contain insofar as practicable:

- (a) a description of the rule;
- (b) the statutory authority the agency is exercising;
- (c) a schedule of the dates for any hearings, meetings or other opportunities for public participation in the development of the rule;
- (d) the date the agency anticipates submitting a notice of proposed rulemaking activity, if known;
- (e) the name, address and telephone number of the agency representative, knowledgeable on such rule, from whom any information may be obtained and to whom written comments may be submitted concerning such rule;
- (f) a statement as to whether the rule will affect small businesses as defined in this Act; and
- (g) any other information which may serve the public interest.

Nothing in this Section shall preclude an agency from adopting a rule which has not been summarized in a regulatory agenda; nothing in this Section shall require an agency to adopt a rule summarized in a regulatory agenda. The Secretary of State shall adopt rules necessary for the publication of a regulatory agenda, including but not limited to standard submission forms and deadlines. (Added by PA 84-954, effective January 1, 1986)

Section 5.01. GENERAL RULEMAKING. In all rulemaking to which Sections 5.02 and 5.03 do not apply, each agency shall:

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include:

1. The text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed;

2. The specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized;

3. A complete description of the subjects and issues involved;

4. For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis, which shall contain a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance; and

5. The time, place and manner in which interested persons may present their views and comments concerning the proposed rulemaking.

During the first notice period, the agency shall provide all interested persons who submit a request to comment within the first 14 days of the notice period reasonable opportunity to submit data, views, arguments or comments, which may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for such submissions. The agency shall consider all submissions received.

The agency shall hold a public hearing on the proposed rulemaking, during the first notice period, in the following cases: (1) the agency finds that a public hearing would facilitate the submission of views and comments which might not otherwise be submitted; (2) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government which may be affected. At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking. Such a public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register, unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 10 days before submission of the notice required under paragraph (b) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings on proposed rulemaking to prevent undue repetition at such hearings. Such hearings must be open to the public and recorded by stenographic or mechanical means.

(b) provide up to 45 days additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The period commencing on the day written notice is received by the Joint Committee shall be known as the second notice period, and shall expire 45 days thereafter unless prior to that time the agency and the Joint Committee have agreed to extend the second notice period beyond 45 days for a period not to exceed an additional 45 days, or the agency has received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include: (1) the text and location of any changes made to the proposed rulemaking during the first notice period; (2) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis, which shall contain a summary of issues raised by small businesses during the first notice period; and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and (3) if written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register pursuant to Paragraph (a) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each of the small businesses which have presented views or comments on the proposed rulemaking during the first notice period and to any interested person who requests a copy during the first notice period. The agency may charge a reasonable fee for providing such copies to cover postage and handling costs.

(c) after the expiration of second notice period, after notification from the Joint Committee that no objection will be issued, or after response by the agency to a statement of objection issued by the Joint Committee, whichever is applicable, the agency shall file, pursuant to Section 6 of this Act, a certified copy of each rule, modification, or repeal of any rule adopted by it,

which shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing, unless a later effective date is required by statute or is specified in the rule.

(d) No rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under paragraph (a) commenced. Any period during which the rulemaking is prohibited from being filed under Section 7.06a shall not be considered in calculating this one-year time period. In addition, no rule or modification which contains an incorporation by reference under subsection (b) of Section 6.02 may be adopted and filed with the Secretary of State pursuant to paragraph (c) of Section 5.01 and Section 6 of this Act unless the agency adopting and filing the rule is in receipt of written approval from the Joint Committee on Administrative Rules. This paragraph (d) applies to any rule or modification or repeal of any rule which has not been filed with the Secretary of State prior to the effective date of this amendatory Act of 1981. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-242, effective January 1, 1982; Amended by PA 82-492, effective January 1, 1982; Amended by PA 82-783, effective July 13, 1982; Amended by PA 84-784, effective January 1, 1986; Amended by PA 84-1329, effective September 9, 1986)

Section 5.02 EMERGENCY RULEMAKING. "Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that an emergency exists which requires adoption of a rule upon fewer days than is required by Section 5.01, and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing, upon filing a notice of emergency rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall include the text of the emergency rule and shall be published in the Illinois Register. Consent orders or other court orders adopting settlements negotiated by an agency may be adopted pursuant to this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing pursuant to Section 6, or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons therefor shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5.01 of this Act is not precluded. No emergency rule may be adopted more than once in any 24 month period, except that this limitation on the number of emergency rules which may be adopted in a 24 month period does not apply to emergency rules which make additions to and deletions from the Drug Manual pursuant to Section 5-5.16 of the Illinois Public Aid Code or the generic drug formulary pursuant to Section 3.14 of the Illinois Food, Drug, and Cosmetic Act. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 84-22, effective July 18, 1985; Amended by PA 84-576, effective January 1, 1986; Amended by PA 85-451, effective September 17, 1987)

Section 5.03. PEREMPTORY RULEMAKING. "Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Peremptory rulemaking shall not be used to implement consent orders or other court orders adopting settlements negotiated by the agency. Where any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, and shall specifically refer to the appropriate state or federal court order or federal law, rules and regulations, and shall be in such form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 84-576, effective January 1, 1986)

Section 5.04 AUTOMATIC REPEAL OF RULES. A rule may provide for its automatic repeal on a date specified in the rule. The repeal shall be effective on the date specified, provided that notice of the repeal is published in the Illinois Register not less than 30 nor more than 60 days prior to the effective date of the repeal. This Section shall not apply to any rules filed pursuant to Section 5.02 of this Act. (Added by PA 83-1387, effective January 1, 1985)

Section 6. FILING OF RULES. (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection.

(b) Concurrent with the filing of any rule pursuant to this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of adopted rules. Such notice shall include:

1. The text of the adopted rule, which shall include: if the material is a new rule, the full text of the new rule; or if the material is an amendment to a rule or rules, the full text of the rule or rules as amended; or if the material is a repealer, such notice of repeal.

2. The name, address and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.

3. Such other information as the Secretary of State may by rule require in the interest of informing the public. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1979; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 82-298, effective January 1, 1982)

Section 6.01. FORM AND PUBLICATION OF NOTICES. (a) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with him, and may refuse to accept for filing such certified copies as are not in compliance with such rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day unless such day is an official State holiday in which case the Illinois Register shall be published on the next following business day and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs.

(b) The Secretary of State shall accept for publication in the Illinois Register all Pollution Control Board documents, including but not limited to Board opinions, the results of Board determinations concerning adjusted standards proceedings, notices of petitions for individual adjusted standards, results of Board determinations concerning the necessity for economic impact studies, restricted status lists, hearing notices, and any other documents related to the activities of the Pollution Control Board that the Board deems appropriate for publication. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-689, effective July 1, 1982; Amended by PA 83-638, effective September 21, 1983; Amended by PA 85-1048, effective January 1, 1989)

Section 6.02. INCORPORATION BY REFERENCE. (a) An agency may incorporate by reference, in its rules adopted in accordance with Section 5 of this Act, rules and regulations of an agency of the United States or rules, regulations, standards and guidelines of a nationally recognized organization or association without publishing the incorporated material in full. The reference in the agency rules must fully identify the incorporated matter by location and date, and must state that the rule, regulation, standard or guideline does not include any later amendments or editions. The agency adopting the rule, regulation, standard or guideline shall maintain a copy of the referenced rule, regulation, standard or guideline and shall make it available to the public upon request for inspection and copying at no more than cost. The agency is not required, however, to make the referenced rule, regulation, standard or guideline available for copying if in so doing the agency would infringe upon another entity's copyright. An agency may also at its discretion file a copy of the referenced rule, regulation, standard or guideline with the State Library. An agency may incorporate by reference such matters in its rules only if the agency, organization or association originally issuing the rules only if the agency, organization or association originally issuing the matter makes copies readily available to the public. This Section shall not apply to any agency internal manual.

For any law imposing taxes on or measured by income, the Department of Revenue may promulgate rules imposing taxes on or measured by income which include incorporations by reference of federal rules or regulations without identifying the incorporated matter by date and without including a statement that the incorporation does not include later amendments.

(b) As provided by this subsection, an agency may incorporate by reference in its rules adopted in accordance with Section 5.01 of this Act guidelines or standards of an agency of the United States, without publishing the incorporated material in full, provided that the incorporated material is readily available to the public. The reference in the agency rules must fully identify the incorporated matter by location and date, and must state that the guideline or standard does not include any later amendments or editions. An agency may incorporate by reference such matters in its rules only if the agency of the United States issuing or distributing the matter, or the organization, association or other entity acting on behalf of the agency of the United States makes copies readily available to the public. The agency adopting the rule shall maintain a copy of the referenced guideline or standard and shall make it available to the public upon request for inspection and copying at no more than cost. The agency is not required, however, to make the referenced rule, regulation, standard or guideline available for copying if in so doing the agency would infringe upon another entity's copyright. An agency may also at its discretion file a copy of the referenced guidelines or standards with the State Library. Use of the incorporation by reference procedure under this subsection (b) must be approved by the Joint Committee on Administrative Rules prior to the submission of the written notice required pursuant to paragraph (b) of Section 5.01 of this Act. An agency seeking to adopt a rule containing incorporation by reference under this subsection (b) shall submit a written request to the Joint Committee on Administrative Rules. In determining whether to approve an incorporation by reference, the Joint Committee shall use the following standard: whether or not the material sought to be incorporated is readily for public inspection. No rule which contains an incorporation by reference pursuant to this subsection (b) may be accepted by the Secretary of State for adoption and filing pursuant to paragraph (c) of Section 5.01 and Section 6 of this Act, unless the agency is in receipt of written approval from the Joint Committee on Administrative Rules. (Added by PA 83-638, effective September 21, 1983; Amended by PA 84-784, effective January 1, 1986; Amended by PA 85-340, effective September 10, 1987)

Section 7. CODIFICATION OF RULES - PUBLICATION. (a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules on or before July 1, 1980. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system on or before October 1, 1980. Such schedule may be by sections of the codification system and shall require approximately one-fourth of the rules to be converted to the codification system by each October 1, starting in 1981 and ending in 1984. All rules on file with the Secretary of State and in effect on October 1, 1984, shall be in compliance with the uniform system for the codification of rules. Rules not so codified as of October 1, 1984, are void, shall be withdrawn by the Secretary of State from the permanent register of the rules, and shall not be published by the Secretary of State in either the Illinois Administrative Code or in the Illinois Register. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this

Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

(b) If no substantive changes are made by the agency in amending existing rules to comply with the codification system, such codified rules may be adopted until October 1, 1984, without requiring notice or publication of the text of rules pursuant to Section 5. In such a case, the publication requirement shall be satisfied by the publication in the Illinois Register of a notice stating that the agency has adopted the rules to comply with the codification system, that no substantive changes have been made in the rules and that the State Library has reviewed and approved the codification of the rules. The notice shall include the current names and numbers of the rules being codified, an outline of the headings of the sections of the rules as codified and may also include a table indicating the relationship between any rule numbers previously used by the agency and the numbering system of the codified rules. The agency shall provide the text of such rules as codified to the State Library for review and necessary changes and recommendations at least 30 days prior to the publication of such notice. Whenever the codification of an emergency or peremptory rule is changed subsequent to its publication as adopted in the Illinois Register, a notice of such change, in the manner set forth in this subsection, shall be published in the next available issue of the Illinois Register. Such a change in the rule's codification shall not affect its validity or the date upon which it became effective.

(c) Each rule proposed in compliance with the codification system shall be reviewed by the State Library under the Secretary of State prior to the expiration of the public notice period provided by Section 5.01(a) of this Act or prior to the publication of the notice required under subsection (b) of this section. The State Library shall cooperate with agencies in its review to ensure that the purposes of the codification system are accomplished. The State Library shall have the authority to make changes in the numbering and location of the rule in the codification scheme, providing such changes do not affect the meaning of the rules. The State Library may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The State Library may add notes concerning the statutory authority, dates proposed and adopted and other similar notes to the text of the rules, if such notes are not supplied by the agency. This review by the State Library shall be for the purpose of insuring the uniformity of and compliance with the codification system. The State Library shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables and other aids for locating rules to assist the public in the use of the Code.

(d) The State Library shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency shall in the notice required by Section 5.01(b) of this Act, or if such notice is not required, at least 10 days prior to the publication of the notice required under subsection (b) of this Section, provide to the Joint Committee a response to the recommendations of the State Library including any reasons for not adopting the recommendations.

(e) In the case of reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law, which affects rules on file with the Secretary of State, the State Library shall notify the Governor, the Attorney General, and the agencies involved of the effects upon such rules on file. If the Governor or the agencies involved do not respond to the State Library's notice within 45 days by instructing the State Library to delete or transfer the rules, the State Library may delete or place such rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General and the agencies involved.

(f) The Secretary of State shall publish an Illinois Administrative Code as effective January 1, 1985. The Code shall be published on or before June 1, 1985, and the Secretary of State shall update each section of the Code at least annually thereafter. Such Code shall contain the complete text of all rules of all State agencies filed with his office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the State Library. The Secretary of State shall design the Illinois Register to supplement such Code. The Secretary of State shall make copies of the Code available generally at a price covering publication and mailing costs.

(g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such presumption. Judicial notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the State Library, notes and other materials developed under this Section in connection with Administrative Code shall be the property of the State. No person may attempt to copyright or publish for sale such materials except the Secretary of State as provided in this Section. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1348, effective July 16, 1980; Amended by PA 83-555, effective January 1, 1984; Amended by PA 83-556, effective January 1, 1984; Amended by PA 83-1362, effective September 11, 1984)

Section 7.01. CERTIFICATION OF RULES FILED WITH THE SECRETARY OF STATE. (a) Beginning January 1, 1978, whenever a rule, or modification or repeal of any rule, is filed with the Secretary of State, the Secretary of State within three working days after such filing shall send a certified copy of such rule, modification or repeal to the Joint Committee on Administrative Rules established in Section 7.02.

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after that date unless within such 60 day period the issuing agency certifies to the Secretary of State that the rule is currently in effect.

Within 45 days after the receipt of any certification pursuant to this sub-section (b), the Secretary of State shall send the Joint Committee on Administrative Rules established in Section 7.02 a copy of each agency's certification so received along with a copy of the rules covered by the certification. (Added by PA 80-1035, effective September 27, 1977)

Section 7.02. ESTABLISHMENT AS LEGISLATIVE SUPPORT SERVICES AGENCY - AGENDA - PUBLICATION OF INFORMATION - FEES. The Joint Committee on Administrative Rules is established as a legislative support services agency subject to the Legislative Commission Reorganization Act of 1984.

When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least five days prior to the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of dates on which notices under Section 5.01 of this Act were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. However, the Joint Committee shall provide copies of documents or publications without cost to agencies which are directly affected by recommendations or findings included in such documents or publications. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 82-372, effective September 2, 1981; Amended by PA 83-638, effective September 21, 1983; Amended by 83-1257, effective August 15, 1984)

Section 7.03. ADMINISTRATION OF OATHS OR AFFIRMATIONS - AFFIDAVITS OR DEPOSITIONS - SUBPOENA. (a) The Executive Director of the Joint Committee or any person designated by him may administer oaths or affirmations, take affidavits or depositions of any person.

(b) The Executive Director, upon approval of majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person, or the production for the Joint Committee of any records, books, papers, contracts or other documents.

If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt. (Added by PA 80-1035, effective September 27, 1977)

Section 7.04. POWERS OF JOINT COMMITTEE. The Joint Committee shall have the following powers under this Act:

1. The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules. Such function shall be advisory only, except as provided in Sections 7.06a and 7.07a.

2. The Joint Committee may undertake studies and investigations concerning rulemaking and agency rules.

3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigations of the rulemaking activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

4. Hearings and investigations conducted by the Joint Committee under this Act may be held at such times and places within the State as such Committee deems necessary.

5. The Joint Committee shall have the authority to request from any agency an analysis of the:

a. effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues;

b. agency's evaluation of the submissions presented to the agency pursuant to Section 5.01 of this Act;

c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer;

d. agency's justification and rationale for the intended rule, amendment or repealer.

6. Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1044, effective October 1, 1978; Amended by PA 81-1035, effective January 1, 1980; Amended by PA 81-1514, effective January 1, 1981)

Section 7.05. RESPONSIBILITIES OF JOINT COMMITTEE. The Joint Committee shall have the following responsibilities under this Act:

1. The Joint Committee shall conduct a systematic and continuing study of the rules and rulemaking process of all state agencies, including those agencies not covered in Section 3.01 of this Act, for the purpose of improving the rulemaking process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and like errors not affecting the construction or meaning of the rules, and it shall make recommendations to the appropriate affected agency.

2. The Joint Committee shall review the statutory authority on which any administrative rule is based.

3. The Joint Committee shall maintain a review program, to study the impact of legislative changes, court rulings and administrative action on agency rules and rulemaking.

4. The Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent or otherwise deficient. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.06. EXAMINATION OF PROPOSED RULE, AMENDMENT OR REPEAL OF RULE BY THE JOINT COMMITTEE - DETERMINATIONS - EVALUATION OF STATE FORMS. (a) The Joint Committee may examine any proposed rule, amendment to a rule, and repeal of a rule for the purpose of determining whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based, whether the rule, amendment to a rule or repeal of a rule is in proper form and whether the notice was given prior to its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal. In addition, the Joint Committee may consider whether the agency has considered alternatives to the rule which are consistent with the stated objectives of both the applicable statutes and regulations, and whether the rule is designed to minimize economic impact on small businesses.

(b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

(c) If within the second notice period the Joint Committee certifies its objections to the issuing agency then that agency shall within 90 days of receipt of the statement of objection:

1. modify the proposed rule, amendment or repealer to meet the Joint Committee's objections;
2. withdraw the proposed rule, amendment, or repealer in its entirety, or;
3. refuse to modify or withdraw the proposed rule, amendment or repealer.

(d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment or repealer to meet the Joint Committee's objections to the Secretary of State, which notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

(e) If an agency elects to withdraw a proposed rule, amendment or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee, in writing, of its election and shall submit a notice of the withdrawal to the Secretary of State which shall be published in the next available issue of the Illinois Register.

(f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment or repealer, within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State which shall be published in the next available

issue of the Illinois Register and the Secretary of State shall refuse to accept for filing a certified copy of such proposed rule, amendment or repealer under the provisions of Section 6.

(g) If an agency refuses to modify or withdraw the proposed rule, amendment or repealer so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

(h) No rule, amendment or repeal of a rule shall be accepted by the Secretary of State for filing under Section 6, if such rulemaking is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section.

(i) The Joint Committee shall evaluate and analyze all State forms which have been developed or revised after the effective date of this amendatory Act of 1984 to ascertain the burden, if any, of complying with such forms by small businesses. Such evaluation and analysis shall occur during the Joint Committee's review conducted pursuant to Section 7.08 of this Act. In the event the Joint Committee determines that any such form is unduly burdensome to small businesses the Joint Committee may object to such form or make specific recommendations for change in such form. Objections to such forms shall be made in the manner prescribed in Section 7.07 of this Act. For the purposes of this subsection the terms "State form" and "form" shall mean any document or piece of paper used by the State agency requesting or transmitting information, printed or reproduced by whatever means, usually with blank spaces for the entry of additional information to be used in any transaction between the State of Illinois and private sector businesses. These include, but are not limited to, grant applications, licensing applications, permit applications, and requests for proposal applications, but do not include books, pamphlets, newsletters and intra-agency forms which do not affect the rights of or procedures available to persons or entities outside the State agency. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 83-1341, effective September 7, 1984; Amended by PA 84-1329, effective September 9, 1986)

Section 7.06a. JOINT COMMITTEE STATEMENT ON PROPOSED RULE, AMENDMENT OR REPEALER, OBJECTIONABLE UNDER COMMITTEE'S REVIEW STANDARDS. (a) If the Joint Committee determines that adoption and effectiveness of a proposed rule, amendment or repealer or portion of a proposed rule, amendment or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07 or 7.08 of this Act and would constitute a serious threat to the public interest, safety or welfare, the Joint Committee may at any time prior to the taking effect of such proposed rule, amendment or repealer issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement

shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The proposed rule, amendment or repealer or the portion of the proposed rule, amendment or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State nor take effect for at least 180 days from receipt of the statement by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule, amendment or repealer or any portion thereof which is prohibited from being filed by this subsection during this 180 day period.

(c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the prohibition of the proposed rule, amendment or repealer or the portion thereof to which the statement was issued from being filed and taking effect. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment or repealer or the portion thereof and the proposed rule, amendment or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment or repealer or the portion thereof which the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period provided in subsection (b) expires prior to passage of the joint resolution, the agency may file the proposed rule, amendment or repealer or the portion thereof as adopted and it shall take effect. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.07. EXAMINATION OF RULE BY THE JOINT COMMITTEE - DETERMINATION. (a) The Joint Committee may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form.

(b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

(c) Within 90 days of receipt of the certification, the agency shall:

1. Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection;
2. Notify the Joint Committee that it has elected to repeal the rule, or;
3. Notify the Joint Committee that it refuses to amend or repeal the rule.

(d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rulemaking procedures for that purpose by giving notice as required by

Section 5 of this Act. The Joint Committee shall give priority to rules so amended when setting its agenda.

(e) If the agency elects to repeal a rule as a result of the Joint Committee objections, it shall notify the Joint Committee, in writing, of its election and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5 of this Act.

(f) If the agency elects to amend or repeal a rule as a result of the Joint Committee objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

(g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

(h) If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.07a. JOINT COMMITTEE STATEMENT ON RULE ADOPTED UNDER SECTIONS 5.02 OR 5.03 AND DEEMED OBJECTIONABLE UNDER COMMITTEE'S REVIEW STANDARDS. (a) If the Joint Committee determines that a rule or portion of a rule adopted under Sections 5.02 or 5.03 of this Act is objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07, or 7.08 of this Act and constitutes a serious threat to the public interest, safety or welfare, the Joint Committee may issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate such suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended in accordance with this subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension as provided in subsection (c). The agency may not enforce, nor invoke for any reason, a rule or portion of a rule which has been suspended in accordance with this subsection. During the 180 days, the agency may not file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended in accordance with this subsection.

(c) The Joint Committee shall, as soon as practicable after issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove such rule or portion of a rule from the collection of effective rules. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.08. PERIODIC EVALUATION OF RULES BY JOINT COMMITTEE - CATEGORIES. (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee shall develop a schedule for this periodic evaluation. In developing this schedule, the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. Such schedule shall include at least the following categories:

1. human resources;
2. law enforcement;
3. energy;
4. environment;
5. natural resources;
6. transportation;
7. public utilities;
8. consumer protection;
9. licensing laws;
10. regulation of occupations;
11. labor laws;
12. business regulation;
13. financial institutions; and
14. government purchasing.

(b) Whenever evaluating any rules as required by this Section, the Joint Committee's review shall include an examination of:

1. organizational, structural and procedural reforms which effect rules or rulemaking;
2. merger, modification, establishment or abolition of regulations;
3. eliminating or phasing out outdated, overlapping or conflicting regulatory jurisdictions or requirements of general applicability; and
4. economic and budgetary effects. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1035, effective October 1, 1979)

Section 7.09. ADMINISTRATION OF ACT. The Joint Committee shall have the authority to adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers and duties. (Added by PA 80-1035, effective September 27, 1977)

Section 7.10. REPORT OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS BY JOINT COMMITTEE. The Joint Committee shall

report its findings, conclusions and recommendations including suggested legislation to the General Assembly by February 1, of each year.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Council, as required by Section 3.1 of "An Act to revise the law in relation to the General Assembly," approved February 25, 1874, as amended, and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 83-784, effective January 1, 1984)

Section 8. PETITION FOR ADOPTION OF RULES. (a) An agency shall, in accordance with Section 5, adopt rules which implement recently enacted legislation of the General Assembly in a timely and expeditious manner.

(b) Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. If, within 30 days after submission of a petition, the agency has not initiated rulemaking proceedings in accordance with Section 5 of this Act, the petition shall be deemed to have been denied. (PA 79-1083; Amended by PA 83-529, effective January 1, 1984)

Section 9. DECLARATORY RULINGS BY AGENCIES. (a) Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling prior to making it available. (PA 79-1083; Amended by PA 82-727, effective November 12, 1981)

(b) Overlapping regulations. (1) Any persons subject to a rule imposed by a State agency and to a similar rule imposed by the federal government may petition the agency administering the State rule for a declaratory ruling as to whether compliance with the federal rule will be accepted as compliance with the State rule.

(2) If the agency determines that compliance with the federal rule would not satisfy the purposes or relevant provisions of the State law involved, the agency shall so inform the petitioner in writing, stating the reasons therefor, and may issue a declaratory ruling to that effect.

(3) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law involved but that it would not satisfy the relevant provisions of the State rule involved, the agency shall so inform the petitioner and the Joint Committee on Administrative Rules, and the agency may initiate a rulemaking proceeding in

accordance with Section 5 to consider revising such rule to accept compliance with the federal rule in a manner that is consistent with the purposes and relevant provisions of the State law.

(4) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law and the State rule involved, the agency shall issue a declaratory ruling indicating its intention to accept compliance with the federal rule as compliance with the State rule and the terms and conditions under which it intends to do so. (PA 79-1083; Amended by PA 82-727, effective November 12, 1981; Amended by PA 85-317 and PA 85-367, effective September 11, 1987)

Section 10. CONTESTED CASES - NOTICE - HEARING. (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular Sections of the statutes and rules involved; and
4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

(b) Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. (PA 79-1083)

Section 11. RECORD IN CONTESTED CASES. (a) The record in a contested case shall include:

1. all pleadings (including all notices and responses thereto), motions, and rulings;
2. evidence received;
3. a statement of matters officially noticed;
4. offers of proof, objections and rulings thereon;
5. proposed findings and exceptions;
6. any decision, opinion or report by the hearing examiner;
7. all staff memoranda or data submitted to the hearing examiner or members of the agency in connection with their consideration of the case; and
8. any communication prohibited by Section 15 of this Act, but such communications shall not form the basis for any finding of fact.

(b) Oral proceedings or any part thereof shall be recorded stenographically or by such other means as to adequately ensure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party.

(c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. (PA 79-1083; Amended by PA 82-783, effective July 13, 1982)

Section 12. RULES OF EVIDENCE - OFFICIAL NOTICE. In contested cases: (a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

(b) Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examination required for a full and fair disclosure of the facts.

(c) Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. (PA 79-1083)

Section 13. PROPOSAL FOR DECISION. Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument, to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the persons who conducted the hearing or one who has read the record. (PA 79-1083)

Section 14. DECISIONS AND ORDERS. A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions

of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 14.1 EXPENSES - ATTORNEY FEES. (a) In any contested case initiated by any agency which does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 42.611 of the Civil Practice Law, any allegation made by the agency without reasonable cause and found to be untrue shall subject the agency making such allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated. A claimant may not recover litigation expenses when the parties have executed a settlement agreement which, while not stipulating liability or violation, requires the claimant to take correction action or pay a monetary sum.

The claimant shall make his demand for such expenses to the agency. If the claimant is dissatisfied because of the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making his claim for the expenses incurred in the administrative action. The Court of Claims may reduce the amount of the litigation expenses to be awarded under this Section, or deny an award, to the extent that the claimant engaged in conduct during the course of the proceeding which unduly and unreasonably protracted the final resolution of the matter in controversy.

(b) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. (Added by PA 82-670, effective January 1, 1982; Amended by PA 82-1057, effective February 11, 1983; Amended by PA 85-587, effective January 1, 1988)

Section 15. EX PARTE CONSULTATIONS. Except in the disposition of matters which they are authorized by law to entertain or dispose of on an ex parte basis, neither agency members, employees nor hearing examiners shall, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or his representative, except upon notice and opportunity for all parties to participate. However, an agency member may communicate with other members of the agency, and an agency member or hearing examiner may have the aid and advice of one or more personal assistants. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 16. LICENSES. (a) When any licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

(c) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases. At any such hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, or continuation or renewal of the license. If, however, the agency finds that the public interest, safety or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action which proceedings shall be promptly instituted and determined.

Any application for renewal of a license which contains required and relevant information, data, material or circumstances which were not contained in an application for the existing license, shall be subject to the provisions of Section 16(a) of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 17. RATE-MAKING. Every agency which is empowered by law to engage in ratemaking activities shall establish by rule, not inconsistent with the provisions of law establishing such ratemaking jurisdiction, the practice and procedure to be followed in ratemaking activities before such agency. (PA 79-1083)

Section 18. WAIVER. Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties. (PA 79-1083)

Section 19. (PA 79-1083; Repealed as of January 1, 1978, by PA 80-1035, effective September 27, 1977)

Section 20. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable. (PA 79-1083)

Section 21. EFFECTIVE DATE. This Act takes effect upon its becoming a law. (PA 79-1083, effective September 22, 1975)

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